92-1654

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

LINDA A. LEAF,

Petitioner,

vs.

SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY, GERALD STERNBERG, ROY KORTE, CHARLES STIERMAN, BRIAN HENDERSON, LYNNE LEVIHN, and UNKNOWN INSURANCE COMPANIES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Can the state demand secret examination of confidential client files, even under the auspices of an attorney disciplinary investigation?
2. Under Feldman, can an attorney bring general constitutional challenges to state bar disciplinary rules and regulations in federal district court?
3. Can a state court adjudge a federal plaintiff's constitutional issues irrelevant, and determine them to be meritless without hearing, and then turn right around and use preclusion as a tool to block federal civil rights litigation on those issues?

PARTIES TO THE PROCEEDING BELOW

In addition to the captioned parties, the parties included Andrew B. Haynes as plaintiff in the District Court.

TABLE OF CONTENTS

	PAGE
Questions Presented	i
Parties To The Proceeding Below	ii
Table Of Contents	ii
Table Of Cases	iv
Opinions Below	v
Grounds For Jurisdiction	v
Constitutional Provisions and Statutes Involved	v
Jurisdictional Statement	vi
Statement Of The Case	1
Reasons For Granting The Writ	
The Decision Below Is Incorrect	9
Public Policy Requires That Certiorari Be Granted	29
Conclusion	47

TABLE OF CASES

Cases Cited:	PAGE
Democratic Cent. Com. v . Wash. Met. Area Tr. Comm., 842 F.2d 402 (D.C. Cir 1988)	27
Edmonson v. Leesville Concrete Co. Inc., 111 SCt 2077 (1991)	24
England v. La. State Bd. of Med. Exam., 375 U.S. 411, 84 S.Ct. 461 (1964)	22
D.C. Court of Appeals v. Feldman, et al., 460 U.S. 462, 103 S.Ct. 1303 (1983)	21, 24, 31
Gray v. Lacke, 885 F.2d 399 (7th Cir 1989)	27
Ivy Club v. Edwards, 885 F.2d 399 (3rd Cir 1991)	19
Ktsanes v. Underwood, 560 F.2d 590 (7th cir 1977)	12
Levine v. Supreme Court of Wis., 679 F Supp 1478 (WD Wis 1988)	48
McCarthy v. Madigan, __US__, 112 S.Ct. 1081 (1992)	48
Middlesex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 102 S.Ct. 2515 (1982)	46

Painewebber, Inc. v. Farnam, 870 F.2d 1286 (7th Cir 1989) 27

Rogen v. Supreme Court of VA., 590 F.Supp. 102 (ED VA 1989) 48

U.S. v. Napper, 887 Fed. 1528 (11th Cir. 1989) 28

Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746 (1971) 5,32, 39

OPINIONS BELOW

The United States District Court for the Eastern District of Wisconsin filed its Decision and Order dismissing for lack of subject matter jurisdiction on October 31, 1991 (A-I). On November 14, 1991, Petitioners filed their Motion For Reconsideration; on November 15, 1991, the court denied that motion (A-4).

GROUNDS FOR JURISDICTION

The judgment sought to be reviewed was entered by the United States Court of Appeals for the Seventh Circuit on November 12, 1992, and is reported at 979 F2d 598 (7th Cir 1992). Petitioners' timely Petition for Rehearing with Suggestion for Rehearing In Banc were denied January 8, 1993; the Petition For Writ Of Certiorari was filed within ninety days of that date.

This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

None. All issues involve judicially created exceptions to federal court jurisdiction.

JURISDICTIONAL STATEMENT

Jurisdiction of the District Court is under 28 U.S.C. sections 1331, 1343, 2201, and 2202; 42 U.S.C. sections 1981, 1983, 1985, 1986, and 1988; and the Constitution of the United States, more particularly Article Four and the First, Third, Fourth, Fifth, Ninth, Tenth, Thirteenth, and Fourteenth Amendments thereto.

STATEMENT OF THE CASE

Petitioner, Linda A. Leaf (a white female and lawyer), and Andrew B. Haynes (a black male and Ph.D. consultant), the plaintiffs below, have been business associates and personal friends for eighteen years. Leaf was admitted to the Wisconsin and federal bar in 1975 and has always been a sole practitioner. Over the years Leaf openly and consistently advertised for the need for legal reform, and offered legal, social and business programs to pursue that goal. The programs were entitled Law Related Services.

In 1986 four grievances against Leaf were filed with the Wisconsin Board of Attorneys Professional Responsibility (hereafter: BAPR) which included many allegations of improper acts by Haynes. Leaf and Haynes responded to all of BAPR's questions. The case sat dormant

until 1989 when Leaf received a BAPR letter demanding that she produce nine years of client records of clients other than the four complaining witnesses; nine years of business records; nine years of personal tax returns; nine years of business tax returns; and nine years of Haynes' records (to be produced by Leaf; A-75). An attorney, defendant Stierman, the chairperson of the local BAPR investigating committee, had appointed himself as the investigator on Leaf's case and directed the issuance of this demand which was signed by other BAPR personnel. A few years earlier this same attorney had been opposing counsel on a major case of Leaf's which was concluded successfully on behalf of Leaf's client (A-92). Some of the alleged misconduct violations against Leaf pertained to activity in that case.

Although the disciplinary rules grant an accused attorney an absolute right to request that a different investigator be appointed once an attorney is given notice as to who is the investigator, and the rules require that notice must be given, Leaf was never informed that Stierman appointed himself the investigator (A-92).

Leaf and Haynes filed suit in federal district court on March 14, 1989. In Count I of the complaint Leaf challenged the constitutionality of Wisconsin SCR 21.14 and 22.24 (gag rule) which make it a misconduct violation for an attorney to make public, including informing her clients, about any BAPR activity prior to the filing of a formal disciplinary complaint.

The factual allegations of the Count I gag rule count related to a grievance

made by an opposing counsel in a 1988 estate case. By letter to the Wisconsin Supreme Court Leaf sought permission to communicate with her clients regarding the actions of the opposing counsel. She was denied permission (A-35, 37, 69). No disciplinary charges were filed against Leaf regarding this estate case grievance and the investigation was closed at the time Leaf filed her federal suit. Due to this gag rule the affected clients still do not know of the secret state inquiry into their case. In Count I Leaf sought a declaratory judgment that the gag rule was unconstitutional.

In Count II Leaf and Haynes sought damages and an injunction for violations of their civil rights, based on racial and sex discrimination, by the arbitrary and capricious interference with Leaf's law practice and Haynes' business activi-

ties, inter alia. Count III was between Leaf and Haynes and all of the defendants, adding Henderson and Levihn, both lawyers, for a racially motivated conspiracy to violate Leaf's and Haynes' civil rights. Henderson and Levihn were alleged to have filed a spurious multi-million dollar state lawsuit against Leaf and Haynes for the sole purpose of embarrassing and humiliating them (A-51). The suit contained scandalous allegations of sexual assault and false imprisonment against Leaf and Haynes. It was dismissed for lack of prosecution before this federal suit was filed; no summons had been served (A-90).

The district court on April 28, 1989, abstained the entire lawsuit under Younger. However, the court did recognize that not all of Leaf's and Haynes' claims were cognizable in the state proceeding

(A-II). In response to the court's inquiry, the state, representing all defendants except Henderson and Levihn promised the court that Leaf would be able to raise her constitutional claims in the course of the BAPR proceedings.

Formal disciplinary charges were issued against Leaf by BAPR in October, 1989. During the discovery and trial process whenever Leaf attempted to raise her constitutional claims against the disciplinary rules and process and her civil rights claims against BAPR officials she was told that those issues were irrelevant. She was never allowed to discover or present evidence on those claims.

The Wisconsin Supreme Court adopted all of the referee's findings of fact and recommendations, and suspended Leaf for six months from the practice of law. The

Wisconsin court affirmed, without explanation, that Leaf's constitutional claims had no merit and are unsubstantiated. The findings included that Leaf was guilty of non-cooperation with a BAPR investigation, a misconduct violation, because she refused to provide the records demanded in the 1989 letter.

Leaf and Haynes then returned to federal district court in November, 1991. A proposed Amended Complaint (A-55) included all of the original claims and added new ones. The new claims were: 1. a constitutional challenge seeking declaratory and injunctive relief to the disciplinary rules under which the 1989 letter demand was issued as being an unreasonable search and seizure (as to Leaf's clients, business associates, and herself) and a violation of both the attorney/client privilege and the right of

Leaf's clients against self-incrimination; 2. a constitutional challenge seeking declaratory and injunctive relief to the stated Wisconsin policy that the attorney disciplinary rules and procedures are not bound by federal constitutional rights except for the attorney's right against self-incrimination; 3. a constitutional challenge seeking declaratory and injunctive relief to the BAPR nebulous "pattern of practice" policy; 4. a claim seeking declaratory and injunctive relief and damages for the violation of the constitutional and civil rights of Leaf and Haynes prior to and concurrent with Leaf's disciplinary hearing; 5. a claim seeking declaratory and injunctive relief and damages for a racially motivated conspiracy to violate the constitutional and civil rights of Leaf and Haynes; and, 6. a claim for damages for

failure to prevent the constitutional violations and the conspiracy to commit said violations.

On October 31, 1991, without motion or hearing the district court dismissed the entire lawsuit reasoning that all of the claims were inextricably intertwined with the Wisconsin court's decision (A-1). Leaf and Haynes appealed to the Seventh Circuit, which affirmed the dismissal of all of Leaf's claims but reversed the dismissal of Haynes' claims (A-7).

Leaf and Haynes petitioned the Seventh Circuit for rehearing with suggestion for rehearing in banc. The Seventh Circuit denied the petition (A-29).

REASONS FOR GRANTING THE WRIT

The Decision Below Is Incorrect

As a result of groundless presump-

tions, the courts below improperly commingled Leaf's civil rights and constitutional claims into a unidentified grouping. The factual allegations for the Count I gag rule claim involved a disciplinary investigation of Leaf in which no charges, and hence no disciplinary trial, were ever brought. It was a closed incident at the time of the initial filing of the federal lawsuit.

Leaf's Henderson and Levihn claim pertains to Henderson's filing of a state lawsuit against Leaf which was ultimately dismissed for lack of prosecution.

Since, since Henderson and Levihn, like Haynes, were not parties in the state disciplinary trial against Leaf, they were not involved in the state action and the claims involving them could not be raised. The panel below erred in claiming that the gag rule count and the

Henderson and Levinn count were inextricably intertwined.

The district court correctly initially found issues in plaintiffs' original suit that were not cognizable in the state disciplinary action. But when Leaf returned to the district court, it refused - without explanation - to address those issues in denying federal jurisdiction to plaintiffs. The district court held no hearing or inquiry to determine which federal claims and constitutional issues were determined by the state court or could have been raised in the state action. Indeed, despite their burden of proof, the federal defendants brought no motion and presented no evidence. The district court just presumed plaintiffs out of court. The fundamental unfairness of this decision is highlighted by its application to plaintiff Haynes.

In the gag rule count, Count I, Leaf was barred by BAPR and the Wisconsin Supreme Court from advising her clients in a then pending estate case of a disciplinary complaint made by the opposing counsel in the case. Her clients are still unaware of the secret state conduct affecting their rights and interests because Leaf is still under the gag rule.

Leaf sought permission from the Wisconsin Supreme Court, via letter, to inform her clients of the actions of opposing counsel in the making of a complaint against her in their case. The Wisconsin court refused. Leaf's gag rule count challenges the constitutionality of this disciplinary rule. The facts are almost identical to the facts in Ktsanes v. Underwood, 560 F.2d 790 (7th Cir 1977), just substitute bar "disciplinary" rule for bar "admission" rule, where the

federal plaintiff had sought waiver of a bar admission rule; the Seventh Circuit ruled the constitutional challenge could be brought in federal court.

Although the state in its brief filed in the court below falsely argued that Leaf's gag rule challenge was raised in her disciplinary proceedings, Leaf's motion for sanctions clearly spells out the procedural and historical distinction between Leaf's gag rule count from Leaf's other counts (A-132). The state never filed a response to the sanctions motion. The panel's decision summarily denied Leaf's sanctions motion without any findings or explanation.

Abstention does not accomplish what it is designed to (a state ruling may clarify or resolve the constitutional issues) if the federal plaintiff cannot even raise federal constitutional chal-

lenges in the state proceeding. It merely delays the inevitable federal action following the state proceeding and postpones the possible vindication of the federal plaintiff's constitutional rights.

The decision below was incorrect in its factual finding by presuming that Leaf's claims were decided by the Wisconsin court. As demonstrated by the record, Leaf's constitutional claims were deemed <u>irrelevant</u> and she was prevented from discovering and presenting evidence on them.

Initially, in order to trigger abstention, the state promised the district court that Leaf could raise her constitutional claims in any state disciplinary proceedings. However, when Leaf tried to raise those claims, she was rebuffed, as demonstrated by the record (from tran-

p 14, ln 17:

Mr. Roethe: "The only objection that is valid to your duty to cooperate is that this information might tend to incriminate me under the fifth amendment."

p 16, ln 14:

Mr. Roethe: "...Haberman specifically found there is no constitutional right not to testify or to produce records."

p 27, ln 1:

Referee Regez: "Well, we're not going into constitutional questions."

Transcript of May 11, 1990, hearing, p 3, ln 10:

Mr. Roethe: "...Number two, the Board of Attorneys Professional Responsibility is not on trial here. Bad faith, BAPR's policies and procedures; and BAPR's investigation is not the issue here...

...Andrew Haynes is not a party to these proceedings. His interests are not involved..."

Transcript of July 18, 1990, hearing, p 52, ln 17:

Referee Regez: "...In other words, I'm not going to permit this hearing to develop and degenerate into putting the Board on trial...

This form (sic) is not for the purpose of trying the Board of Attorneys Professional Responsibility."

Leaf's Interrogatories to BAPR:

Question #30: "Please state all procedural safeguards to insure document requests by Board district investigations:

develop and degenerate into putting the Board on trial...

This form (sic) is not for the purpose of trying the Board of Attorneys Professional Responsibility."

Leaf's Interrogatories to BAPR:

Question #30: "Please state all procedural safeguards to insure document requests by Board district investigations:

a. are for relevant documents only.

b. do not violate the constitutional rights of respondent attorneys and their clients; and

c. are not otherwise abusive or ultra vires."

BAPR answer: "Objected to on the grounds that the information sought in the question is not relevant nor likely to lead to relevant information."

(BAPR objected to nineteen of Leaf's interrogatory questions regarding BAPR's conduct in the same fashion. All objections were sustained by Referee Regez.)

Trial Denial

Trial transcript, vol 3a, p 453, ln 23:

Mr. Roethe: "The Board's investigation and the Board's reports have all been ruled irrelevant and immaterial in this proceeding by Your Honor in discovery proceedings, and they are immaterial. We're not going to put the Board on trial here, Your Honor, and that's your own words and that's the law."

Referee Regez: "That's right..."

Trial transcript, vol 3a, p 455, ln

17:

Referee Regez: "I think that's immaterial...Because I have ruled that the Board was not going to be put on trial in this case..."

Trial transcript, vol 3a, p 469, ln 3:

Ms. Leaf: "The offer of proof is, Your Honor, that the Board has in its possession stolen documents..."

ln 19:

Referee Regez: "Sustained. I don't think it's material."

Trial transcript, vol 3a, p 511, ln 23:

Mr. Roethe: "Same objection. What the Board's policies is are is irrelevant and immaterial."

Referee Regez: "Sustained."

Trial transcript, vol 3a, p 532, ln 13:

Ms. Leaf: "Does the Board have a procedure to identify potential conflicts of interest between an investigator and a respondent attorney?"

Mr. Roethe: "Objected to, irrelevant and immaterial."

Referee Regez: "Sustained."

Trial transcript, vol 4, p 855, ln 6:

(When questioning Diane DeMerchant) Mr. Ollivier: "...to attack the credibility of this witness to show that these were not her ideas and words, but rather these were manipulated and made by Paul Dallas."

Mr. Roethe: "It's all objected to as

irrelevant and immaterial."

Referee Regez: "Sustained."

Trial transcript, vol 4, p 856, ln 5:

Mr. Roethe: "That's ridiculous, and it's irrelevant and immaterial what the Board new (sic) or believed."

Referee Regez: "Sustained."

Trial transcript, vol 6, p 199, ln 6:

Mr. Roethe: "I'm going to object to constitutional issues. They do not create a defense under the rules of professional responsibility other than the Fifth Amendment."

Trial transcript, vol 6, p 247, ln 12:

Mr. Roethe: "The Board has nothing to do with this. The Board is not on trial here. This is irrelevant and immaterial."

Referee Regez: "Sustained."

BAPR counsel's (Roethe) trial brief, p 10:

"The only constitutional protection which an attorney has in a misconduct investigation, proceeding, or prosecution is the privilege against self-incrimination."

The above examples certainly do not cover all of the circumstances in which Leaf was prevented from effectively, adequately, and meaningfully raising her

constitutional claims.

Although the state made broad claims to the panel below that Leaf raised her constitutional claims in the disciplinary proceedings, the state presented no evidence by citations to the record to contradict the fact that Leaf's constitutional and civil rights claims were blocked in that they were ruled irrelevant. As proof that her claims were considered, the state merely quoted from the Wisconsin court's decision that Leaf's constitutional claims had no merit. Ivy Club v. Edwards, 943 F.2d 270, 275 (3rd Cir 1991). The parties can not be bound by disputed issues determined irrelevant by the state court (see: Ivy Club, at 284).

In their Amended Complaint Leaf also charged that she was denied her constitutional right to access to the courts

because of the above scenario. This constitutional claim of deprivation of the right to access to court, having become ripe only after her treatment in the state court, was obviously not litigated in the state action.

Because the state actors (who are the federal defendants) are members and agents of the state judiciary, it is unlikely that an impartial examination of the plaintiff's federal claims were made in state court of state constitutional misconduct. This is especially true if the claims of the federal plaintiff involve a state conspiracy by the federal defendants (members and agents of the state judiciary) to deprive the federal plaintiffs of their constitutional right to a federal trial.

Although the panel below did not expressly rule that federal district

court jurisdiction should not be exercised in cases involving bar disciplinary rules, that is the result of its decision. Since bar disciplinary matters will by their very nature touch on some state judicial action, under the panel's analysis in this case, any constitutional claims to state bar disciplinary rules are likely to invoke either inextricably intertwined or res judicata/collateral estoppel, and thus prevent federal jurisdiction. This in effect would nullify District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983). Feldman holds that whether the state bar action was a judicial proceeding or not, general constitutional challenges to bar admission rules can be brought into federal district court. Therefore, it is inappropriate to apply a different standard to bar disciplinary

rules.

Even if it is argued that litigants can preserve their federal court jurisdiction by not raising their constitutional claims in the state proceeding (though inextricably intertwined may still operate as a bar), Leaf chose to litigate her federal claims in federal court and was involuntarily thrown into state court because of abstention. England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 84 SCt 461, (1964) requires her to at least bring those claims to the attention of the state court, which she did. It was the state court actors which deemed those claims irrelevant in the state proceeding. To allow the state actors, who are the federal defendants, to reap the benefit of blocking Leaf's claims in the state court to bar the claims from a

federal forum is a gross injustice and sets a dangerous precedent: in any civil rights litigation where the federal defendants are connected with the state judiciary, by simply ruling that the federal plaintiff's claims are irrelevant in a state action, the claims are defeated without ever getting to the merits in either the state and federal actions. In essence, state actors would be immune from federal civil rights liability.

If the panel's interpretation of Feldman is allowed to stand, all attorneys subject to disciplinary actions will be denied, as a matter of law, the right of access to the federal courts. Further, because of the gag rule, citizens have no knowledge of secret state violations of their federal rights and, therefore, they are also denied access to the federal court. Leaf's duty to protect her clients

constitutional rights allows her standing on their behalf.

Edmonson v. Leesville Concrete Co., Inc., __ U.S. ___, 111 SCt 2077, 2078 (1991).

Because the panel's intrepretation of Feldman blocks Leaf's constitutional challenges to the gag rule and disciplinary investigation rules, Wisconsin now has a judicially mandated state right to order attorneys not to advise their clients of secret state inspections of their clients' confidential files.

To interpret this civil rights complaint as an appellate review of the state decision would result in the anomaly of no legal procedure to bring constitutional challenges to the attention of the federal courts, making states the predominant arbitrator of federal constitutional rights. Under the panel's interpretation of Feldman, to approach the

federal district court is seeking a review of the state court decision. Therefore, as a matter of law, the determination of attorney's constitutional rights will be confined to the very entity accused of the unconstitutional acts.

Leaf's second, third and fourth counts of the Amended Complaint contain general constitutional challenges to Wisconsin attorney disciplinary rules and procedures. Among those challenged is the rule that subjects an attorney to discipline if the attorney does not "fully" cooperate with a BAPR investigation. Leaf asserts that the rule is unconstitutional because there is no provision for legitimate exceptions or hearing on objections, such as demands for wholesale production of nine years of client records. It permits unsupervised and secret government intrusion into an attorney's client re-

cords in violation of attorney/client privilege, the client's right against self-incrimination, unconstitutional search and seizure, etc. The disciplinary process provides no mechanism to object to any unconstitutional or even criminal acts without first incurring an automatic violation.

Simply by bringing any disciplinary claim against an attorney, the state may have secret access to the personal and confidential files of any citizen who has hired an attorney. By the panel's ruling, an attorney can not object, inform the client or seek access to the federal courts to protect federal constitutional rights of his clients' or himself.

How can the state court's superficial holding that the federal plaintiffs' claims are without merit and "unsubstantiated" be a meaningful decision on the

merits, if those same issues were deemed irrelevant at the trial level? The state court decision does not specify which constitutional claims have no merit or why. Paine Webber, Inc v. Farnam, 870 F2d 1286 1291 (7th Cir 1991). The Seventh Circuit should not irrebuttably presume that they are the same constitutional claims plaintiffs bring into federal court, especially when the state, charged with establishing the elements for preclusion (Democratic Cent. Com. v. Wash. Met. Area Tr. Comm., 842 F2d 402, 409 (DC Cir 1988) and Gray v. Lacke, 885 F2d 399, 406 (7th Cir 1989); interpreting Wisconsin law), presents no evidence that the constitutional issues claimed to have no merit are the same as those brought into federal court. Therefore, federal subject matter jurisdiction, which unquestionably existed when federal suit was first

filed, has not been destroyed.

Whether the federal suit fails because of preclusion or because it is characterized as a quest for a review of the state decision, the result is the same - loss of access to a federal forum for the purposes of fact finding and relief. And, when there was no fact finding in the state action because the federal issues were deemed irrelevant, the result is no forum at all. To accord the full bar of res judicata, collateral estoppel and inextricably intertwined without explanation or discussion, as the lower court has done, is to have the federal court place its imprimatur on this conspiracy. Because Leaf was denied any opportunity to litigate her constitutional issues in state court, none of the issues can be inextricably intertwined. U.S. v. Napper, 887 F2d 1528, 1534 (11th

Cir 1989).

Public Policy Requires That Certiorari Be Granted

Although it was brought to their attention, the opinion of the panel below does not even mention the fact that Leaf's federal claims were ruled irrelevant in the state disciplinary action. The integrity of the judicial process requires that relevant and crucial facts can not be ignored in the decision making. The substance of due process is betrayed when a court issues a decision that may look rational and grounded on legal principles, but does not relate to the facts of the case before it; facts that were either ignored or deliberately blocked from presentation. The public is fooled because while the "reasoned" decision is published, the factual record is not.

The quality and honesty of judicial decisions also affects the general public. If judges can ignore the pertinent facts put before them, what is the foundation for due process and the rule of law? The message needs to be sent that courts can not neglect relevant facts to an issue in order to find against a litigant they may not like.

It is precisely because a state court has such a strong interest in upholding the validity of its own bar disciplinary rules and procedures and whitewashing the conduct of its own agents that an independent forum in the federal district court should be preserved. But the broader problem reflected in this decision is whether state courts can absolutely close the federal courthouse doors to any litigant by pretending to rule "on the merits" of an issue when

tional issues. Federal defendants can thereby deprive federal plaintiffs of federal district court jurisdiction by merely claiming to "rule" on the issue in a state proceeding.

The result and the precedent set by the Seventh Circuit decision in this case does not reflect good law or practical living. Because of the decision's erroneous application of Feldman, the precedent is set that an attorney will never be able to challenge the constitutionality of a state bar disciplinary rule in federal district court on the merits.

The unique circumstance of lawyers, because they are supervised and disciplined by state courts (unlike any other profession), is that any attorney disciplinary matters must involve a state court, usually the highest court of the

because they are supervised and disciplined by state courts (unlike any other profession), is that any attorney disciplinary matters must involve a state court, usually the highest court of the state. Therefore, abstention under Younger v. Harris, 401 U.S. 37, 91 SCt 746 (1971) and inextricably intertwined will usually be claimed to apply to restrict federal court jurisdiction. If the Feldman rule that federal district courts do have subject matter jurisdiction of general constitutional challenges is diluted or erroneously applied, such as in this case, the result is that there will be virtually no right to federal subject matter jurisdiction.

In practice, the results of the precedent set by the Seventh Circuit's decision is this case could lead to national judicial disarray as parties jock-

ary rule depends more on parochial whim than law or merit. Following this precedent, it is difficult to imagine any circumstance in which a federal district court would have subject matter jurisdiction of a challenge to an attorney disciplinary rule unless the parochial agenda willed it.

A further unique hardship on lawyers is that since disciplinary rules are promulgated by state courts, it leaves the determination of the constitutionality of a particular disciplinary rule or practice in the hands of the very body that created it. The normal checks and balances intended by the separation of powers between the branches of government does not exist in attorney disciplinary matters.

At first blush the complaints of a suspended attorney about the disciplinary

powers between the branches of government does not exist in attorney disciplinary matters.

At first blush the complaints of a suspended attorney about the disciplinary rules may seem unimportant and insignificant. After all, must not the attorney have engaged in some unethical behavior? And, isn't the code of professional conduct and rules enforcing it there to protect the public? So what if attorneys are second class citizens, as long as the public is protected and the legal profession is held to a high ethical standard?

But all of that rests on the presumptions: that the particular attorney is guilty of some wrongdoing; that the disciplinary process is void of politics or prejudices; that a disciplinary rule is for the benefit of the public and promotes the quality of the profession as

opposed to protecting the legal institutional turf, private interests, and status quo; that disciplinary rules and procedures are constitutionally valid; and, that the same judicial body which promulgates a rule can fairly evaluate that rule's constitutionality and the conduct of its own agents. For example, one can legitimately ask: Does the challenged gag rule operate for the benefit of the public or to protect lawyers? How does the gag rule's forbidding an attorney who is being investigated from telling anyone, even his own clients, protect the public? How can the public make an informed judgment as to the effectiveness and fairness of the attorney disciplinary process when the vast majority of disciplinary matters are conducted in secret?

Many American citizens would be stripped of the protection of the Bill of

Rights by state and federal judicial rules forbidding an attorney from notifying his clients of the secret state examination of their records.

From 1979 to 1992 there was an average of 1,111 complaints per year of ethical violations by lawyers made to the Wisconsin Board of Attorneys Professional Responsibility. These complaints to BAPR resulted in an average of 30.92 formal actions per year (2.78%). Because of the gag rule, all of the complaints that were dismissed were done in secret; 97.22% of them. The public has little information on the claimed ethical violations. More importantly, the public has no idea of why the allegations were dismissed in 97.22% of the grievances filed against attorneys. Furthermore, formal action (2.78%) does not necessarily mean public exposure. There is a form of discipline

called a "private reprimand" which is just that - private.

Granted, the interest of the states in regulating lawyers is especially great since lawyers are essential to the distribution of justice, and are officers of the courts. But the panel's precedent now gives the states absolute control of lawyers and their and their clients' access to federal district court. It ignores the reality of the federal interest at stake in the quality of the bar. Often admission to or discipline from a state bar precipitates parallel action from the federal bar. Therefore, the quality and degree of politicalization of a state bar membership seeps into the federal bar, locale by locale.

Making attorneys second class citizens does not promote ethics and morality within the legal profession. Indeed, it

has the opposite effect. It enables those who are politically well connected and malicious to ruin attorneys who are critical of the legal status quo and demand legal reform.

At the risk of offending the quite understandable "esprit de corps" of the judiciary, one of the motives of BAPR is to keep reform minded attorneys in line by the abuse of institutional prerogatives and ungrounded irrebuttable presumptions of the correctness of the acts of its agents.

Deprived of federal subject matter jurisdiction, the local politicalization of bar rules and their enforcement proceed virtually unchecked. While what may happen to individual attorneys may seem of little public consequences, but for this Court's ruling, attorneys would not be allowed to advertise because such

creation of the independent counsel and special prosecutor), the state judiciaries can not also impartially judge the conduct of its own agents or the constitutionality of its own rules and regulations. To hold that an attorney has only the option to apply to this Court by petition for certiorari for review of the state decision, statistically denies him a right to a fair trial on any constitutional issues, and denies this Court of district inquiry, investigation and determination.

Even if attorneys are second class citizens, certain fundamental constitutional rights should not be taken away. An attorney should not be absolutely precluded by doctrines of inextricably intertwined, res judicata, collateral estoppel, or Younger from any federal district court jurisdiction regarding bar

An attorney should not be absolutely precluded by doctrines of inextricably intertwined, res judicata, collateral estoppel, or Younger from any federal district court jurisdiction regarding bar matters. After all, these doctrines are not constitutional principles. One's constitutional right to a fair forum (whether state or federal) on claims of constitutional and civil rights violations should not take a back seat to court created doctrines which are designed to promote full faith and credit and judicial economy.

It appears that the district court and the circuit panel have been so prejudiced by the antagonistic portrayal of Leaf and Haynes by the Wisconsin court to presume her out of federal court. The panel's decision comes close to commanding a finding that Haynes' claims are

frivolous (even though he has had no opportunity to prove them and the court had no record from the state or district court), simply because they find them difficult to believe (A-10). Here the Wisconsin court has painted legal reformers as criminals, under argumentum ad hominum (when you can not disprove the idea, attack the man), which have improperly affected the district court's and the circuit panel's perceptions of Leaf and Haynes. Without being given the opportunity to disprove the falsehoods, the presumptions should not be allowed.

For example, the circuit panel's statement in its decision, adopting the Wisconsin court's findings: "Leaf also represented to four clients that Haynes was her legal assistant, her assistant or her legal associate - though there was no employer-employee relationship between

Leaf and Haynes" (Decision, p 2; A-8). This is misleading. Leaf has never referred to Haynes as her "legal associate". More importantly, the Wisconsin rules of professional conduct do not require a legal assistant to be an employee. Official comments to the rule regarding responsibilities to nonlawyer assistants state: "Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services." (emphasis added) But by reporting this portion of the Wisconsin court's decision as an example of Leaf's alleged misconduct, the Seventh Circuit has set the precedent that it is a professional ethical violation for a lawyer to use a paralegal who is not an employee of that lawyer.

The Wisconsin court's decision has

Leaf's clients. Since Haynes was not a party to the attorney disciplinary proceedings and Leaf was not present when any of Haynes' alleged misconduct took place, it is an affront to due process to make a factual finding incriminating someone while at the same time handcuffing the person trying to defend himself. When allegation after allegation is handled in this manner, it becomes extremely difficult to unravel, especially when you are limited to legal issues on appeal and are deprived of any fact finding forum whatsoever. A limited presentation of the errors in the Wisconsin court's decision and the Seventh Circuit's adopted findings is contained in (A-146).

The dilemma is this. If Leaf is restricted to applying for certiorari to this Court from the Wisconsin court, she is deprived of a fair fact finding forum.

ings is contained in (A-146).

The dilemma is this. If Leaf is restricted to applying for certiorari to this Court from the Wisconsin court, she is deprived of a fair fact finding forum. This Court does not hold de novo fact finding hearings. If Leaf goes into federal court to try to prove how and why the conspirators generated the falsehoods (something she was prevented from doing in the state action) she is thrown out for seeking a review of the Wisconsin court's decision. Indeed, this is the very quandary in which the state conspirators intended to place Leaf (and Haynes). What greater damage to the reputation of a Wisconsin lawyer then to have falsehoods of ethical violations adopted as factual findings by the Wisconsin court? Leaf is in the undesirable position of having to persuade the lower

court and now this Court of the correctness of her legal position while not being able to rebut the factual findings. The precedent set by the panel's decision puts every lawyer, and citizen, in the same dilemma; depending on whim is not good law.

With the tremendous increase in the criminal caseload facing the federal judiciary in recent years, it is understandable that the mistreatment of one attorney, depicted as evil and unethical, creates little sympathy. Good law is not the only victim of this precedent. Unfortunately, the integrity of the judiciary also falls victim. The time available to do justice continues to shrink even though many wrongs sought to be redressed through civil action can be just as damaging to the public as some of the worse criminal acts.

Before exercising abstention, the court must first consider whether the federal plaintiff will have an adequate opportunity to raise its constitutional challenges in the state proceeding. Middelsex County Ethics Committee v. Garden State Bar Association, 457 U.S. 423, 102 SCt 2515 (1982). Middelsex holds that there should be no abstention when there is a showing of bad faith, malice, or harassment on the part of the state court. What stronger showing of bad faith then when the state, in order to trigger abstention, tells the federal court that the federal plaintiff can raise his constitutional issues in the state action, but when the federal plaintiff attempts to assert his constitutional claims in the state action, he is told that they are irrelevant.

CONCLUSION

The determination of Leaf's federal constitutional and civil rights claims are made by presumption without basis in fact. The District Court and Circuit Court both presume that the unsupported and unexplained one-sentence statement of the Wisconsin Supreme Court parroting the referee as to no merit resulted from full hearing when, as shown by BAPR's own transcripts, Leaf was not allowed to raise any constitutional matters; the irrebuttable presumption that the attorney disciplinary action considered/acted on a federal claim is clear error and requires reversal to prevent the setting of improper constitutional precedent for all courts. Having denied the federal plaintiff the opportunity to litigate her constitutional claims in state court

where Leaf was forced to be, the state supreme court should not be allowed to litigate by fiat of unexplained no-merit ruling on unspecified constitutional rights.

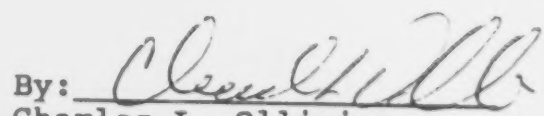
Federal courts are vested with a "virtually unflagging obligation" to exercise the jurisdiction given them (McCarthy v. Madigani, ___ US ___, 112 SCt 1081, 1087 (1992). Judicially created exception to federal jurisdiction are just that, limited exceptions designed to accomplish a limited purpose. District courts have a duty to specifically "win-now out" claims under such exceptions from those ripe for federal jurisdiction (Rogen v. Supreme Court of Virginia, 590 FSupp 102, 108 (ED Va, 1984). This determination is a question of federal law (Levine v. Supreme Court of Wisconsin, 679 FSupp 1478, 1485 (WD Wis 1988)). Any

exceptions to federal jurisdiction must not be imposed absent evidence and hearing proving the need for exception; exception by presumption violates constitutional rights of due process and access to the federal courts for federal issues.

For the reasons set forth above, petitioner Linda A. Leaf, prays that a Writ of Certiorari be granted.

April 8, 1993

Respectfully submitted,
LINDA A. LEAF

By: 

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92-1654

Supreme Court, U.S.
FILED
APR 8 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

LINDA A. LEAF,

Petitioner,

vs.

SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY, GERALD STERNBERG, ROY KORTE, CHARLES STIERMAN, BRIAN HENDERSON, LYNNE LEVIHN, and UNKNOWN INSURANCE COMPANIES,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPENDIX

TABLE OF CONTENTS

Page	Document and Date
A-I	District Court Abstention Order April 28, 1989
A-1	District Court Dismissal Order October 31, 1991
A-4	Reconsideration Denial Order November 15, 1991
A-7	Circuit Court Decision November 12, 1992
A-29	Circuit Court Rehearing Denial Order; January 8, 1993
A-30	District Court Complaint
A-55	District Court Amended Complaint
A-128	Appellants' Motion For Sanctions April 9., 1992
A-146	Leaf's State Court Motion For Reconsideration

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LINDA A. LEAF and
ANDREW B. HAYNES,
Plaintiffs,

v.

Case No. 89-C-317

SUPREME COURT OF THE STATE OF WISCONSIN; BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY; GERALD STERNBERG; ROY KORTE; CHARLES STIERMAN; BRIAN HENDERSON; LYNNE LEVIHN; and UNKNOWN INSURANCE COMPANIES;
Defendants.

Order

Based on the arguments and evidence presented prior to and during the hearing held in the above-captioned case on April 27, 1989, the court ORDERS that the defendants' Motion to Dismiss (filed April 4, 1989) is DENIED IN PART AND GRANTED IN PART. Because there is an ongoing state proceeding in which an important state interest is involved and because the plaintiffs have an adequate opportunity for judicial review of cer-

tain of their constitutional claims during the state proceedings, this court will abstain from hearing those issues and claims which will be considered in the state proceeding and will n o enjoin any state proceedings. See Middlesex County Ethics Committee V. Garden State Bar Association, 457 U.S. 423 (1982); Younger v. Harris, 401 U.S. 37 (1971).

IT IS FURTHER ORDERED that the plaintiffs' Motion to Strike Counterclaim (filed April 26, 1989) IS DENIED.

IT IS FURTHER ORDERED that the plaintiffs' Motion for Temporary Restraining Order (filed April 27, 1989) IS DENIED.

IT IS FURTHER ORDERED that, because it appears that not all the plaintiffs' claims are cognizable in the state proceedings, the court will dismiss this action, but will stay all further pro-

ceedings until such time as the state proceedings have reached a final resolution. See Deakins v. Monaghan, 108 S. Ct. 523 (1988).

IT IS FURTHER ORDERED that, because there appears to be no reason at this time to maintain the file as an open one, for statistical purposes, the Clerk of Court is instructed to submit a JS-6 form to the Administrative Office, thereby closing the case for statistical purposes.

IT IS FURTHER ORDERED that nothing in this order shall be considered a dismissal or disposition of this matter, and either party may reopen the case at any time by advising the court and opposing counsel in writing that it is ready to proceed with the case and that the state proceedings have reached a final resolution.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 28th day of April, 1989.

Thomas J. Curran
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LINDA A. LEAF and ANDREW B. HAYNES,
Plaintiffs,

Case No. 89-C-317

v.

SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY, GERALD STERNBERG, ROY KORTE, CHARLES STIERMAN, BRIAN HENDERSON, LYNNE LEVIHN, and UNKNOWN INSURANCE COMPANIES,
Defendants.

DECISION AND ORDER

In 1989, the above captioned action was closed for administrative purposes pending the outcome of a pending state attorney disciplinary proceeding. That proceeding was recently concluded and the plaintiffs have filed a motion for a temporary restraining order asking this court to enjoin plaintiff Linda Leaf's suspension from the practice of law which was ordered by the Wisconsin Supreme

Court on October 16, 12991.

The court ORDERS that the plaintiffs' Motion to Reinstate Cause, for Leave to File Amended Complaint, and for Temporary Restraining Order (filed October 15, 1991) IS GRANTED IN PART AND DENIED IN PART. The request to reopen is granted for the limited purpose of resolving the pending motion. The request for leave to file an amended complaint is denied because no proposed amended complaint has been submitted. See Federal Rule of Civil Procedure 15. The request for a temporary restraining order is denied because the court has no subject matter jurisdiction to review an order of the state supreme court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 485 (1983). The only avenue of review open to the plaintiffs is by way of certiorari to the united States Su-

preme Court. See In re Randall, 640 F.2d 898, 901 (8th Cir.), cert. denied, 454 U.S. 880 (1981).

IT IS FURTHER ORDERED that this action IS DISMISSED for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that, pursuant to Federal Rule of Civil Procedure 58, the Clerk of Court shall enter a judgment of dismissal as a separate document.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 31st day of October, 1991.

Thomas J. Curran
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LINDA A. LEAF
and
ANDREW B. HAYNES,
Plaintiffs,

v.

Case No. 89-C-317

SUPREME COURT OF THE STATE OF WISCONSIN; BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY; GERALD STERNBERG; ROY KORTE; CHARLES STIERMAN; BRIAN HENDERSON; LYNNE LEVIHN; and UNKNOWN INSURANCE COMPANIES;
Defendants.

Order

The court ORDERS that the plaintiff's Motion for Reconsideration (filed November 14, 1991) is DENIED. On April 28, 1989, following a hearing, this court issued an order which stayed this action pursuant to the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971). A decision of the Seventh Circuit Court of Appeals issued on April 27, 1989 which was not cited by the parties,

indicates that when a court abstains pursuant fo Younger under similar circumstances it need not merely stay the case, but should dismiss it. See generally Pincham v. Illinois Judicial Inquiry Board and Its Members, 872 F.2d 1341 (7th Cir. 1989). Despite an attempt at artful pleading, the plaintiffs, in essence, still want this court to overturn the ruling of the Supreme Court of Wisconsin which disciplined attorney Linda Leaf. As this court has already explained, a federal district court has no jurisdiction over such an action. See Decision and Order of Octobger 31, 1991.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 15th day of November, 1991.

Thomas J. Curran
United States District Judge

In the

United States Court of Appeals

For the Seventh Circuit

No. 91-3725

LINDA A. LEAF and ANDREW B. HAYNES,

Plaintiffs-Appellants,

v.

SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY, GERALD STERNBERG, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 89 C 317—**Thomas J. Curran**, *Judge.*

ARGUED MAY 20, 1992—DECIDED NOVEMBER 12, 1992

Before CUDAHY and EASTERBROOK, *Circuit Judges*, and WOOD, JR., *Senior Circuit Judge.*

WOOD, JR., *Senior Circuit Judge.* What promised to be a routine, though unfortunate, attorney disciplinary proceeding has led us into a procedural thicket involving abstention, the *Rooker-Feldman* doctrine, res judicata, and the Eleventh Amendment. We shall now attempt to extricate ourselves, and in so doing, we shall affirm in part and reverse and remand in part the decision below.

I. BACKGROUND

Linda Leaf is an attorney practicing in Milwaukee. In 1991 the Wisconsin Supreme Court suspended Leaf's license to practice law for six months. *See In re Disciplinary Proceedings Against Leaf*, 476 N.W.2d 13, 13 (Wis. 1991). The state supreme court took this action after finding Leaf engaged in professional misconduct by "entering into business relationship with clients in which she had a conflict of interest without making appropriate disclosure, assisting a nonlawyer in the unauthorized practice of law," making misrepresentations to the court, and failing to cooperate in its investigation. *Id.*

Leaf's troubles stemmed from her business relationship with Dr. Andrew Haynes. Leaf and Haynes owned a counseling business that developed personal management plans for individuals, with emphasis on financial, social and sexual matters. Clients would enter into a "life style management contract" whereby they paid the business thirty percent of all money the clients derived from the personal management plans. *Id.* at 14.

Between 1982 and 1986, the business operated from Leaf's law office or from an adjacent suite, and Haynes's bills were at times sent out through Leaf's office. Leaf also represented to four clients that Haynes was her legal assistant, her assistant or her legal associate—though there was no employer-employee relationship between Leaf and Haynes. *Id.*

In 1983 Leaf represented a woman client in a paternity action. During that action, Haynes solicited intimate details from the client about her sexual practices with the alleged father, attempted to give her sexual counseling and advised her to perform sexual favors for the father. Haynes also told the father and his attorney that Haynes was a qualified mediator, and without being asked attempted to mediate the matter. *Id.*

The above episode is but one of the many that prompted the court to suspend Leaf's license. For the complete

story, see the state court opinion. Our interest, however, lies more in the process the Wisconsin Supreme Court used in deciding to discipline Leaf. Therefore, a quick review of Wisconsin's disciplinary system is in order.

The Wisconsin Supreme Court has the exclusive authority to regulate the practice of law and to discipline members of the Wisconsin bar for professional misconduct. *State ex rel. Fiedler v. Wisconsin Senate*, 454 N.W.2d 770, 773 (Wis. 1990). As outlined in Chapter 21 of the Wisconsin Supreme Court Rules, the Board of Attorneys Professional Responsibility ("the Board") serves as an arm of the Wisconsin Supreme Court and assists in the discharge of this duty. The Wisconsin Supreme Court appoints twelve persons to serve on the Board. In turn, the Board appoints, with Wisconsin Supreme Court approval, one member to serve as the professional responsibility administrator. The duties of the administrator are to investigate any possible misconduct or medical incapacity of an attorney and to report his findings and recommendations to the Board. The Wisconsin Supreme Court Rules also provide for a district professional responsibility committee that upon the administrator's request investigates possible misconduct. The administrator reports the results of such investigations to the Board and makes recommendations for disposition in his or her report.

The Board reviews the administrator's recommendations before deciding upon further action. One possible course of action which the Board may take is to file a complaint with the Wisconsin Supreme Court against the attorney. Upon making such complaints, the Board is authorized to retain counsel approved by the Wisconsin Supreme Court to prepare and prosecute formal complaints of attorney misconduct. Once a complaint is filed with the Wisconsin Supreme Court, the Chief Justice must then designate a referee to conduct a hearing on the complaint. After conducting a hearing, the referee files a report stating his or her findings and disposition with the Wisconsin Supreme Court. Either the Board or the attorney may then appeal to the Wisconsin Supreme Court. If appeal is filed,

the Wisconsin Supreme Court conducts the appeal under the rules governing civil appeals. Yet, with or without appeal, the Wisconsin Supreme Court reviews the referee's report and determines the appropriate discipline.

Pursuant to the above procedures the administrator and the Board conducted an investigation of Leaf and prosecuted a complaint against Leaf. A referee heard six days of testimony, including four of Leaf's former clients, with regard to the charges against Leaf. After listening to this testimony, the referee found that Leaf aided, permitted, condoned, and encouraged Haynes's unauthorized practice of law; that Leaf did not fully disclose her conflict of interest to clients when referring several clients to Haynes's counseling business in which Leaf had a part ownership; that Leaf had entered into business relationships with clients in which she compromised her professional judgment for her own personal financial and business interests; that Leaf made several misrepresentations to courts and the Board; and that Leaf failed to cooperate with the Board during its investigation. In light of these findings, the referee recommended a six-month suspension.

Leaf appealed the referee's findings and conclusions, and the Supreme Court reviewed and affirmed these findings and conclusions. *See Leaf*, 476 N.W.2d at 15-16. Looking to the evidence regarding Leaf's associations with Haynes and her misrepresentations to the court with regard to these associations, the Wisconsin Supreme Court rejected Leaf's argument that the referee's factual findings were erroneous.

In addition to reviewing and adopting the referee's factual findings, the Wisconsin Supreme Court also reviewed the defenses raised by Leaf. The Court bluntly rejected these defenses as lacking in merit: "None of the charges Attorney Leaf has made has been substantiated or has the least merit. The way she has conducted her defense in this proceeding is an affront to the dignity and decorum due this court, its disciplinary board and the people who carry out the enforcement of the court's rules governing attorney conduct." *Id.* at 18.

As we will explain, it is the defenses raised in the proceedings before the referee and the Wisconsin Supreme Court which form the basis for Leaf's and Haynes's complaint.

II. PROCEDURE

Leaf and Haynes first filed their complaint in federal district court in March 1989. In the original complaint Haynes and Leaf alleged three causes of action. In the first count of the complaint Leaf challenges the facial constitutional validity of Wisconsin Supreme Court Rules 21.14 and 22.24. These rules impose confidentiality requirements with regard to communications, papers, files, and transcripts involving investigations and proceedings for attorney misconduct. Moreover, Leaf in this count challenges the rules as applied to her. This count is alleged against the supreme court; the Board; Gerald Sternberg, the Board's administrator; and Roy Korte, a legal assistant for the Board.

In the second count Leaf and Haynes allege, among other things, that the investigation of Leaf with regard to her and Haynes's business relationship was racially motivated; conducted with malicious intent; and arbitrary and capricious. (Haynes is an African-American man and Leaf a caucasian woman). Moreover, this count alleges that the investigation, which requested Leaf to turn over information regarding Haynes, was overly broad. This count is alleged against Charles Stierman, a lawyer and investigator for the Board, and the Defendants named in the first count.

The third count of the complaint was alleged by both Leaf and Haynes against all the above-mentioned Defendants; Brian Henderson, a lawyer; Lynne Levihn, a lawyer; and unknown insurance companies. In this count Leaf and Haynes allege that the Wisconsin Supreme Court, the Board, and the individual Defendants entered into a conspiracy to deprive Plaintiffs' constitutional rights. As an example of such conspiracy, the complaint refers to a law-

suit allegedly filed under the color of state law by Levihn and Henderson against Leaf and Haynes for the alleged purpose of embarrassing and humiliating Plaintiffs.

The Board's investigation of Leaf had already begun at the time in which Leaf and Haynes filed their complaint in federal court. Because of this ongoing investigation and proceeding in the state court, on April 28, 1989, the district court entered an order to abstain and stay proceeding under *Younger v. Harris*, 401 U.S. 37 (1971). The court ordered the case closed for statistical purposes, but the court indicated either party could reopen the case at any time by advising the court and opposing counsel that the party was ready to proceed with the case and that the state proceedings had reached a final resolution.

On September 25, 1991, Plaintiffs moved to reinstate the cause of actions and for leave to file an amended complaint. Then on October 16, 1991, the Wisconsin Supreme Court filed its decision. On October 31, 1991, the district court entered an order reopening the case for the limited purpose of considering Plaintiffs' motion. The court denied the motion to file an amended complaint because no amended complaint had been presented to the court. In addition, the court denied the motion for a temporary restraining order and the motion to reopen the case on the basis that the court lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine. That same day the court entered a judgment of dismissal.

On November 14, 1991, Plaintiffs filed a motion for reconsideration. The Plaintiffs attached a proposed amended complaint to this motion. The amended complaint attached to Plaintiffs' motion put forth a much more detailed account of the allegations. Plaintiffs also attempted to add new parties by naming them on the amended complaint. The proposed amended complaint sets forth seven rather than three counts, some of which detail events that allegedly occurred after the entry of the stay in April 1989.

The first proposed count, like the first count in the original complaint, focuses on the Wisconsin Supreme

Court Rules pertaining to the confidential nature of communications and papers in disciplinary matters; the second alleges unconstitutional discovery tactics in the disciplinary proceedings; the third argues that the Board and the Wisconsin Supreme Court violated Plaintiffs' constitutional rights in refusing to recognize Leaf's constitutional challenges to their procedures; the fourth alleges that the Wisconsin Supreme Court and the Board have an unconstitutional policy and procedure in investigating attorneys for discipline; the fifth alleges various persons used their enforcement and investigative authority while acting under the color of law in order to harass the Plaintiffs because of their race and gender; the sixth alleges a conspiracy between numerous individual Defendants and certain members of the Wisconsin Supreme Court to deprive the Plaintiffs of constitutional rights for reasons of race and gender; and the seventh alleges that various Defendants failed to put an end to this alleged conspiracy.

On November 15, 1991, the district court denied the motion for reconsideration indicating that it should have dismissed the case in the first instance under *Younger v. Harris* and reiterating that it lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine. Although not mentioning the amended complaint, the district court's denial implicitly rejected the amended complaint. Plaintiffs appealed the district court judgment on November 25, 1991.

III. ANALYSIS

The debate in this case focuses on whether the judgment entered in the disciplinary proceedings against Leaf preclude Leaf and Haynes from bringing forth the claims raised in their original and amended complaints in federal district court. As the district court's decision to dismiss for lack of subject-matter jurisdiction was a legal determination, we review this dismissal *de novo*.

A. The Amended Complaint

The district judge never directly spoke to the effect of the amended complaint, therefore it is not clear whether the district court rejected the amended complaint because it was too late or whether it looked to the amended complaint and determined that this complaint did not cure the jurisdictional flaws that existed in the original complaint. Before proceeding to a discussion of the propriety of the district court's jurisdictional ruling, we must first determine whether we should look to the original or amended complaint in deciphering whether the district court properly dismissed this case for lack of subject-matter jurisdiction.

The Plaintiffs argue that we should look to the amended complaint because the district court erred in refusing to accept this complaint. Federal Rule of Civil Procedure 15(a) provides that "leave [to amend] shall be freely given when justice so requires." Granted, the Plaintiffs do not have as strong a case for such leave after dismissal as if they had put forth an amended complaint before dismissal. Nonetheless, dismissal for lack of subject-matter jurisdiction under Federal Rules of Civil Procedure 12(b)(1) and 41(b) is not a decision on the merits and, therefore, constitutes dismissal without prejudice. *See Costello v. United States*, 365 U.S. 265, 285 (1961); Fed. R. Civ. P. 12(b)(1), 41(b). And, "[w]hile a court must dismiss a case over which it has no jurisdiction when a fatal defect appears, leave to amend defective allegations of subject matter jurisdiction should be freely given." *Watkins v. Lujan*, 922 F.2d 261, 264 (5th Cir. 1991). As such, we will look to both the original and the proposed amended complaint in determining whether the district court properly dismissed this case for lack of subject-matter jurisdiction.

B. Abstention

The Defendants make several arguments for affirming the district court's dismissal on jurisdictional grounds. One argument is that we should affirm under the abstention

doctrine announced in *Younger v. Harris*. However, we cannot affirm on this basis because the abstention doctrine only applies when there is an ongoing state proceeding. The state proceedings terminated before the district court's dismissal and before this decision. Therefore, the time for abstention has expired. *Allee v. Medrano*, 416 U.S. 802, 817 (1974); *Greening v. Moran*, 953 F.2d 301, 305 (7th Cir.), *cert. denied*, 61 U.S.L.W. 3257 (U.S. Oct. 5, 1992).

C. *Rooker-Feldman*

Now that we have a state judgment, the question moves from what effect state proceedings have on the claims in federal court to what effect the state judgment has on these federal claims.

1. The Doctrine

In a pair of cases known now as *Rooker-Feldman*, the United States Supreme Court declared that federal district courts do not have jurisdiction to review or modify a judgment of a state's highest court. As the Court said in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), "The jurisdiction possessed by the District Courts is strictly original." *Id.* at 416. In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the Court refined its earlier statement saying that district courts have no jurisdiction "over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *Id.* at 486.

A district court, however, may have jurisdiction when the litigant's challenge is not directed at a state court's judicial proceedings but rather involves a state court's administrative, legislative, or ministerial actions. The facts of *Feldman* illustrate this difference.

In *Feldman*, a Maryland attorney sought admission to the District of Columbia Bar. When the Committee on

Admissions of the District of Columbia Bar ("Committee") denied Feldman's admission, Feldman petitioned the District of Columbia Court of Appeals. The court upheld the Committee's denial. Thereafter, Feldman took his case to federal district court. Feldman sought a declaration that the D.C. Court of Appeals and the Committee violated the Fifth Amendment and the Sherman Act, and also an injunction granting him admission to the bar. *Id.* at 465-69.

The district court dismissed Feldman's suit on the ground that it lacked subject-matter jurisdiction. The court found that the D.C. Court of Appeals' order denying Feldman's petition was a judicial act. The D.C. Court of Appeals, moreover, is treated under 28 U.S.C. § 1257(b) as the highest court of a state, with its final judgments or decrees directly reviewable by the Supreme Court. *Feldman*, 460 U.S. at 464. The district court, therefore, felt it had no authority to review "an order of a jurisdiction's highest court." *Id.* at 470. The Supreme Court agreed that a district court has no authority to review a final judgment of a state court in judicial proceeding, *id.* at 482, but disagreed that Feldman's complaint was limited to the D.C. Court of Appeals' judicial proceeding.

A judicial proceeding, the Court explained, "investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist." *Id.* at 477 (quoting *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908)). A legislative proceeding, however, focuses on the future "and changes existing conditions by making a new rule to be applied thereafter." *Id.* (quoting *Prentis*, 211 U.S. at 226).

In denying Feldman's petition, the D.C. Court of Appeals had engaged in a judicial proceeding, for the court had considered both the application of the rule and the legal validity of that rule. The court had adjudicated and rejected Feldman's claim of a present right of admission to the bar—"the essence of a judicial proceeding." *Id.* at 481. This, however, did not deprive the federal district court of jurisdiction over the entirety of Feldman's claims.

The Supreme Court noted that to the extent Feldman "mounted a general challenge to the constitutionality" of the bar rule, the federal district court did have subject-matter jurisdiction. *Id.* at 483. This is so because in promulgating rules regulating the bar, state supreme courts may be acting in a *nonjudicial* capacity. *Id.* at 485. A district court in reviewing a bar rule is not, therefore, reviewing the final judgment of a state court—a task delegated by 28 U.S.C. § 1257 to the Supreme Court. In short, federal district courts "have subject-matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case." *Feldman*, 460 U.S. at 486.

The Court did agree, however, that the district court was barred from reviewing Feldman's claim that the D.C. Court of Appeals acted unconstitutionally. This was so because Feldman's allegations were "inextricably intertwined" with the D.C. Court of Appeals' decision in "judicial proceedings" to deny his petition. *Id.* at 486-87. That being the case, for a district court to consider Feldman's constitutional claims would be tantamount to the district court's reviewing the state-court decision and usurping the Supreme Court's role. "This the district court may not do." *Id.* at 483-84 n.16.

While the Court allowed Feldman to proceed in federal district court on his challenge to the constitutionality of the bar rule, it specifically did not "reach the question of whether the doctrine of res judicata forecloses litigation" on Feldman's constitutional claims. *Id.* at 487-88.

In assessing the Plaintiffs' claims in this case in light of *Rooker-Feldman* we are forced then to ask two questions: 1) Was the disciplinary proceeding before the Wisconsin Supreme Court a judicial proceeding; 2) If so, are Plaintiffs' claims inextricably intertwined with those proceedings so as to make consideration of Plaintiffs' claims an impermissible review of the state judicial proceedings?

2. Judicial Proceeding

This court does not dispute the district court's characterization of the Wisconsin disciplinary procedure as judicial in nature. The *Leaf* case involved a six-day hearing with four witnesses and an appeal to Wisconsin's highest court. The nature of the claims and defense forced the state court to investigate, declare and enforce liabilities as they stood on present and past facts and under laws already in existence. *See Feldman*, 460 U.S. at 477. The state court did not act in a legislative role; it promulgated no new rules. Neither did the court act in an administrative or ministerial role; instead it fully adjudicated and rejected Leaf's claim of a present right. *See Greening v. Moran*, 953 F.2d 301, 305 (7th Cir.), *cert. denied*, 61 U.S.L.W. 3257 (U.S. Oct. 5, 1992) (attorney disciplinary proceeding before state supreme court is judicial in nature).

We do question, however, the district court's conclusion that *Rooker-Feldman* bars that court from hearing Haynes's claims. The Wisconsin Supreme Court disciplined only Linda Leaf; Andrew Haynes was neither an attorney nor a party to the Wisconsin disciplinary proceedings. Concededly, the Plaintiffs did not strenuously argue the different posture of these two individuals. Nonetheless, the Plaintiffs did argue the following in their April 1989 Brief in Opposition to Defendants' Motion to Dismiss:

> The attorney disciplinary action alleged does not include Plaintiff Haynes, a non-attorney. If there is, in fact, a Wisconsin judicial proceeding to protect federal constitutional rights, it is closed to Haynes, a black man. Therefore, contra to the assertions of Defendants, *Younger* cannot apply to him . . . .

(Opp'n Br. at 3-4.) Moreover, this distinction was again raised by the Plaintiffs in their Memorandum in Support of Motion for Reconsideration. In this memorandum Plaintiffs argued that because Haynes was not a party to the disciplinary proceedings, his claims have not been heard in any forum. The Plaintiffs reiterated this argument on appeal.

We find that the district court erred in failing to distinguish between Leaf and Haynes. There is, therefore, no judgment against Haynes. Haynes was not required to utilize state judicial remedies before, or instead of, bringing a Section 1983 action in federal court. *See Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982). Rather, Haynes was at liberty to bring federal claims in federal court—a liberty that Haynes exercised. And because there is no state court judgment with respect to Haynes, the district court was not deprived of jurisdiction to proceed on Haynes's federal claims under the *Rooker-Feldman* doctrine. This does not mean, as we explain below, that Haynes's claims are without other jurisdictional problems.

3. Inextricably Intertwined

Although we believe the district court erred in dismissing Haynes's claims under the *Rooker-Feldman* doctrine, the district court did not err in dismissing Leaf's claims on this basis. As we mentioned above, a state judgment precludes parties from raising in federal district court claims that were reviewed by the state court or claims that are inextricably intertwined with claims reviewed by the state court.

Leaf in her original and amended complaint attempted to assert constitutional claims under the Civil Rights Act, 42 U.S.C. §§ 1983, 1985. In these complaints Leaf challenges the constitutional validity of Wisconsin Supreme Court Rules related to the disciplinary process; the application of such rules to her proceedings; the motives and tactics of the persons and entities investigating, prosecuting, and reviewing the disciplinary proceedings against her; other unconstitutional acts which were supposedly taken in furtherance of these allegedly wrongful and discriminatory motives; and she alleges that much of this was done as part of a discriminatory conspiracy against her and Haynes.

It is apparent to us by looking at the allegations in both the original and amended complaints that Leaf is essen-

tially attacking the investigative procedures and motives for those procedures taken in the Wisconsin disciplinary action. Granted, Leaf alleges a few acts, such as Henderson and Levihn filing a spurious lawsuit for improper goals, that do not directly relate to the proceedings. Yet, even such incidents are presented as examples of the allegedly discriminatory and wrongful motives of the Board and others involved in Leaf's disciplinary investigation. Not only do these allegations relate to the disciplinary investigation against Leaf, it is clear that similar, if not identical, claims were raised to the Board, the referee, and the Wisconsin Supreme Court.

For example, the Wisconsin Supreme Court in its decision in this case specifically stated that the referee properly rejected Leaf's claims "that her failure to respond to the Board was precipitated by an unconstitutionally overbroad order to produce records, that the Board was attempting to punish her for having brought an action in federal court concerning this proceeding . . . ." *Leaf*, 476 N.W.2d at 17. The state supreme court further stated:

> Attorney Leaf attacked the motivation for and the conduct of this disciplinary proceeding. She alleged, *among other things*, that the referee's exclusion of Dr. Haynes from the depositions scheduled by the Board during its investigation improperly deprived her of what she termed competent advice and assistance of counsel. She defended her failure to comply with the Board's requests for information by characterizing those requests as "abusive and unconstitutional demands." She also accused the Board of misrepresentation or falsification of records and alleged that the investigator for the district professional responsibility committee had altered deposition transcripts. She contended that the investigator should have been disqualified from investigating the matter because he had represented an opposing party in litigation in which Attorney Leaf had obtained a substantial settlement for her client.

> Arguing that the referee erred in assessing the credibility of the testimony of her former clients, Attorney Leaf referred to one of them as "an intentional and vicious perjurer, acting on a plan of racial hatred" in concert with a person she described as "an avowed Nazi." Indeed, it is her contention that this disciplinary proceeding was the product of a racist plot against her and Dr. Haynes.

Id. at 17-18.

We do not, unfortunately, have the record of the hearing before the Wisconsin referee as it was not made a part of the record on appeal. However, it is apparent from the above summary that Leaf raised the same barrage of claims with regard to an alleged racist plot, unconstitutional investigations, improper motives, and more in the Wisconsin proceedings than she has raised in her complaints filed in district court and which we now review. And, considering the great similarity in the allegations in her complaints before us and in the claims discussed by the Wisconsin Supreme Court, to the extent these two sets of claims are not identical, the claims raised in Leaf's original and amended complaints are inextricably intertwined with those raised before and addressed by the Wisconsin Supreme Court. Under *Rooker-Feldman*, therefore, the district court is without jurisdiction to review those claims.

Leaf, of course, disagrees with this assessment of her cause of actions. For example, Leaf argues that based on *Wood v. Orange County*, 715 F.2d 1543, 1546 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984), there is federal jurisdiction because the referee in the disciplinary proceedings and the Wisconsin Supreme Court did not allow her to fully develop her contentions of unconstitutional conduct. While this proposition has merit when applied to the facts in *Wood*, it does not apply to Leaf.

In *Wood*, the appellants had been represented in criminal prosecutions by state public defenders. To obtain the

public defenders' services, the plaintiffs had signed affidavits of insolvency. Those affidavits contained a clause which informed plaintiffs of the possibility that a lien would be imposed against their property for the value of services rendered by the public defender. The clause also contained language stating that by signing the affidavit of insolvency, the plaintiffs waived their right to have notice, counsel, and an opportunity to be heard if the liens were sought.

After the criminal cases were completed, and without notice to plaintiffs, the state court entered liens against the plaintiffs. Almost a year later, when a collection agency came knocking, the plaintiffs first learned of the liens. At that point "the time for filing an appeal had elapsed," and plaintiffs "lacked a reasonable opportunity to appeal the judgment." *Id.* at 1548. It was this deprivation that prompted the *Wood* court to hold *Rooker-Feldman* inapplicable and to hold open the federal court door to the plaintiffs. As the court noted, "The important point is that plaintiffs lacked a reasonable opportunity to raise their [constitutional] claims in the proceedings surrounding entry of the judgment." *Id.*

The same cannot be said for Leaf who was aware of the proceedings against her, who participated in those proceedings, and who had an opportunity to present her constitutional claims in those proceedings. The Wisconsin Supreme Court, contrary to Leaf's contention, did consider her claims but concluded that "[n]one of the charges Attorney Leaf has made has been substantiated or has the least merit." *Leaf*, 476 N.W.2d at 18. There is no requirement that the state court allow a party to fully develop a claim that the state court determines is frivolous and without merit. To the contrary, when a court labels a contention as without merit, it has considered the claim in rendering its ensuing judgment, and a rejection of such a claim becomes part of that judgment.

Leaf also argues that even if her allegations that the various Defendants used their authority in a manner that

violated her constitutional rights warrants dismissal under the *Rooker-Feldman* doctrine, the same cannot be said of her allegations that several Wisconsin Supreme Court Rules in the disciplinary context are facially unconstitutional. As we discussed above, in *Feldman* the Supreme Court distinguished between challenging unconstitutional actions and general challenges to the constitutionality of a state's statutes, rules, and regulations. *Feldman*, 460 U.S. at 483-88.

In contrast to *Feldman*, Leaf in her amended complaint states that "[t]hroughout the state disciplinary proceeding Leaf attempted to raise the constitutional issues and was refused to be allowed to develop evidence of the constitutional violations, and refused hearing on these issues." We will assume from this admission that Leaf raised her general constitutional attacks in the Wisconsin proceedings. Therefore, Leaf already has a state court judgment on these facial attacks. This means that Leaf's only avenue for federal review is the United States Supreme Court. Accordingly, the district court properly dismissed Leaf's cause of actions for lack of subject-matter jurisdiction.

D. Res Judicata

Even if Leaf's claims were not barred by the *Rooker-Feldman* doctrine, they would be barred in federal district court by res judicata. As the Supreme Court said in *Allen v. McCurry*, 449 U.S. 90 (1980), "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Id.* at 94. *See, e.g., Cromwell v. County of Sac*, 94 U.S. 351, 353 (1877) ("[A] judgment estops not only as to every ground . . . actually presented . . . but also as to every ground which might have been presented . . . ."); *Gray v. Lacke*, 885 F.2d 399, 404-05 (7th Cir. 1989), *cert. denied*, 494 U.S. 1029 (1990).

Wisconsin's interpretation of res judicata is virtually identical. *See Barbian v. Lindner Bros. Trucking Co.*, 316

N.W.2d 371, 374 (Wis. 1982); *State v. Better Brite Plating, Inc.*, 466 N.W.2d 239, 245 (Wis. Ct. App. 1991). That being the case, a litigant who either fails to raise her constitutional claims in Wisconsin state court or has those claims rejected, may be barred by res judicata from attempting to relitigate those claims in federal court. For it is well settled that "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). *See also* 28 U.S.C. § 1738 (full faith and credit statute requires federal courts to respect state judgments); *Allen*, 449 U.S. at 95 (federal courts accord preclusive effect to issues decided by state courts).

This conclusion finds ample support. In *Feldman*, the Supreme Court "expressly" declined to reach the question of whether res judicata foreclosed litigation on Feldman's claims. *Feldman*, 460 U.S. at 487-88. In a footnote, however, the Court noted, "By failing to raise his [constitutional] claims in state court a plaintiff may forfeit his right to obtain review of the state-court decision in any federal court." *Id.* at 484 n.16. The Court supported this statement by noting that: 1) State courts are competent to adjudicate federal constitutional claims; 2) A state court should have the first opportunity to consider the constitutionality of a state statute or rule so that it may give the statute a saving construction; and 3) States have an important interest in regulating lawyers. *Id.*

In *Greening v. Moran*, 953 F.2d 301 (7th Cir.), *cert. denied*, 61 U.S.L.W. 3257 (U.S. Oct. 5, 1992), we also indicated the appropriateness of res judicata on facts very similar to Leaf's situation. The *Greening* case involved an Illinois lawyer who refused to pay his annual fee to the Attorney Registration and Disciplinary Commission; consequently, the Commission removed Greening from the roll of authorized practitioners. Greening continued to practice law and was subsequently held in contempt of court by the Illinois Supreme Court. During the

pendency of the contempt proceedings, Greening filed a suit against the state supreme court in federal district court under 42 U.S.C. § 1983. The federal district court dismissed the complaint. The Supreme Court also denied Greening's petition for a writ of certiorari to review the state supreme court decision.

Greening appealed to this court the dismissal of his 42 U.S.C. § 1983 suit. In our decision affirming the court below, we noted that res judicata stood as a bar to Greening from attacking the constitutionality of the state rules in federal district court. After all, the Illinois Supreme Court "rejected Greening's constitutional arguments on the merits—and if he withheld from the state tribunal some of the points he makes here, Greening has only himself to blame." *Greening*, 953 F.2d at 305. The same can be said in this case.

Plaintiffs, however, rely on *Ktsanes v. Underwood*, 560 F.2d 790 (7th Cir. 1977), *cert. denied*, 435 U.S. 933 (1978), for their proposition that "generalized constitutional challenges to state bar rules are not collateral attacks upon state judicial decisions, and thus, there exists no jurisdictional bar under doctrines of res judicata or collateral estoppel to federal consideration of an attorney's constitutional claims." (Appellants' Br. at 8.) The Plaintiffs' reliance is misplaced.

The *Ktsanes* decision to which Plaintiffs cite is but a brief sequel to *Ktsanes v. Underwood*, 552 F.2d 740 (7th Cir. 1977). In that earlier decision, this court faced the question of whether a district court had jurisdiction to hear a case involving a disappointed bar applicant who sought to have declared unconstitutional an Illinois Supreme Court rule governing admission to the bar. We ruled the district court had jurisdiction. *Id.* at 743.

In that case, the attorney had merely petitioned the state supreme court for exemption from the rule. The attorney had neither challenged the rule nor argued the question of the rule's validity before the state supreme court. In effect, he had asked the state court "for minis-

terial action, not judicial determination." *Id.* Similarly, the "denial of his petition was made by the court in an administrative capacity." *Id.* The state court's denial, therefore, presented no case or controversy and itself "was not appealable to the Supreme Court." *Id.* The attorney, therefore, was not barred access to the federal courts by either res judicata or the *Rooker-Feldman* doctrine.

Four months later in *Ktsanes*, 560 F.2d at 790, the case to which Plaintiffs cite, we denied a petition for rehearing and repeated our earlier holding. We stated that the reason "there existed no jurisdictional bar under the doctrines of *res judicata* or collateral estoppel to federal consideration of plaintiff's constitutional claims [was] because plaintiff's action was not a collateral attack upon a *judicial* decision rendered by the Illinois Supreme Court." *Id.* at 792. The present case, however, does involve a collateral attack upon a judicial decision.

Linda Leaf's claims, therefore, are barred by *Rooker-Feldman* and res judicata. As Andrew Haynes was not a party to the state proceedings, he of course is barred by neither *Rooker-Feldman* nor res judicata.

E. Haynes's Standing

As a final matter, we now consider whether Haynes was properly dismissed on jurisdictional grounds. We have already explained that Haynes was improperly dismissed under the *Rooker-Feldman* doctrine. This does not mean, however, that Haynes's complaint is without its problems.

Under Article III of the United States Constitution, "only parties with a real interest or stake in the litigation have standing to sue in federal court." *Gora v. Costa*, 971 F.2d 1325, 1328 (7th Cir. 1992). We seriously question whether Haynes has standing to raise the claims he alleges in his complaint. Many of Haynes's allegations focus on the allegedly improper motives and investigation

tactics in the attorney professional responsibility investigation against Leaf. Such investigations do not seem to implicate Haynes's privacy interests and/or cause him direct harm. *See generally O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 790 (1980) (enforcement of valid state regulations against business does not deprive clients of constitutionally protected interests in life, liberty, or property). Nonetheless, Haynes makes at least one allegation which he has standing to argue.

In the original complaint Haynes alleges that Brian Henderson and Lynne Levihn brought a suit against Leaf and him for the sole purpose of embarrassing and humiliating them. In the amended complaint Haynes expands this allegation, saying that this suit was filed under the direction of the Board, a state agency. This expansion sufficiently asserts, for purposes of standing, that this action was taken under the color of state law. Haynes, moreover, may have standing to raise other claims under the amended complaint. However, none of the parties have raised or addressed the issue of Haynes's standing; rather, this court raised the question at oral argument. We, therefore, remand for further proceedings on this issue.

The Defendants also raised the argument to this court that we should dismiss Haynes's action under the Eleventh Amendment. There may, indeed, be some problems with Haynes's claims against some of the Defendants under the Eleventh Amendment, particularly with respect to the Board and the Wisconsin Supreme Court. Since the district court, however, has not yet addressed the application of the Eleventh Amendment to this case and considering that remand is necessary to resolve questions of standing, we will not comment on the Eleventh Amendment's application to this case. Rather, we will give the district court an opportunity to consider this issue on remand.

We further note that there appears at this stage to be some substantive problems with Haynes's claims. Indeed, the allegation that the Justices of the Wisconsin Supreme

Court have entered into a racial plot and conspiracy with others seems, to say the least, to push the bounds of reason and credibility. If the district court finds Haynes's claims as lacking in merit as the Wisconsin Supreme Court found Leaf's claims to be, this may be a prime case for sanctions. At this stage, however, we are only looking to the question of jurisdiction, and we of course leave the question of sanctions to the district court.

IV. CONCLUSION

For the above reasons, we affirm the dismissal of Leaf's claims on the basis that the district court lacked subject-matter jurisdiction to review her claims, and we reverse and remand the dismissal of Haynes's claims for proceedings consistent with this opinion. Furthermore, we deny Plaintiffs' motion for sanctions. Costs associated with the appeal of Linda Leaf shall be assessed against her; costs associated with the appeal of Andrew Haynes shall be borne by the respective parties.

AFFIRMED IN PART, AND
REVERSED AND REMANDED IN PART.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

January 8, 1993

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. HARLINGTON WOOD, JR., Senior Circuit Judge

No. 91-3725	) Appeal from the
LINDA A. LEAF and ANDREW B. HAYNES,	) United States
	) District Court
Plaintiffs-Appellants	) for the Eastern
	) District of
v.	
SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY,	) Wisconsin
	) No. 89 C 317
GERALD STERNBERG, et al.,	) Thomas J. Curran,
Defendants-Appellees.	) Judge

ORDER

On consideration of the petition for rehearing with suggestion for rehearing in banc filed in the above-entitled cause by plaintiffs-appellants on November 25, 1992, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

It is ORDERED that the aforesaid petition for rehearing with suggestion for rehearing in banc be, and the same is hereby, DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LINDA A. LEAF
and
ANDREW B. HAYNES,
Plaintiffs,

v.

COMPLAINT

SUPREME COURT OF THE STATE OF WISCONSIN; BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY; GERALD STERNBERG; ROY KORTE; CHARLES STIERMAN; BRIAN HENDERSON; LYNNE LEVIHN; and UNKNOWN INSURANCE COMPANIES;
Defendants.

Plaintiffs Linda A. Leaf, and Andrew B. Haynes, by their attorney Charles Ollivier, and by their co-counsel Attorney Linda A. Leaf, allege as follows:

JURISDICTION

1. This is a civil action seeking injunctive and equitable relief, and damages, to prevent the deprivation under color of law of the State of Wisconsin of plaintiffs' rights, privileges, and immu-

nities under the United States Constitution and its Amendments. Jurisdiction is invoked pursuant to 28 U.S.C. sec. 1331, 1343, 2201 and 2202; 42 U.S.C. sec. 1981, 1983, 1985, and 1988; and the Constitution of the United States, more particularly the first, third, fourth, fifth, ninth, tenth, and four- teenth amendments thereto. The further relief sought in this action is more fully set out below.

PARTIES

2. Plaintiff Linda A. Leaf (hereinafter "Leaf") is an adult citizen of the United States and the State of Wisconsin, residing at all times mentioned herein in Milwaukee County, Wisconsin. Plaintiff Leaf is a licensed attorney admitted to practice under the Supreme Court of Wisconsin, and has been engaged in the practice of law since 1975 in Milwaukee,

Wisconsin. Plaintiff Leaf is a Caucasian female.

3. Plaintiff Andrew B. Haynes (hereinafter "Haynes") is an adult citizen of the United States and the State of Wisconsin, residing at all times mentioned herein in Milwaukee County, Wisconsin. Plaintiff Haynes is a private business person. He is a member of the black race.

4. Defendant Supreme Court of Wisconsin is the highest court of the State of Wisconsin having appellate and supervisory jurisdiction over all Wisconsin courts. The Supreme Court also has the responsibility to regulate the members of the state bar of Wisconsin and promulgates the rules of professional conduct which are the regulations and standards governing the practice of law in the State of Wisconsin. The Supreme Court is

located in the City of Madison, County of Dane, State of Wisconsin.

5. The defendant Board of Attorneys Professional Responsibility (hereinafter "BAPR"), is an arm of the Supreme Court, to assist in the discharge of the court's responsibility to supervise the practice of law. BAPR is located at 611 N. Broadway, City and County of Milwaukee, State of Wisconsin.

6. Defendant Gerald Sternberg (hereinafter "Sternberg") is the administrator of BAPR.

7. Defendant Roy Korte (hereinafter "Korte") is a legal assistant for BAPR, and in this case operated as the primary contact person between Leaf and BAPR.

8. Defendant Charles Stierman (hereinafter "Stierman") is a lawyer practicing in the State of Wisconsin, Milwaukee County, whose office is at 777 E. Wiscon-

sin Ave., Milwaukee , Wisconsin. Stierman is the most recent BAPR investigator assigned to investigate Leaf.

9. Defendant Brian Henderson (hereinafter "Henderson") is a lawyer practicing in the State of Wisconsin, Milwaukee County, with an office at 230 W. Wells, St., Milwaukee, Wisconsin.

10. Defendant Lynne Levihn (hereinafter "Levihn") is a lawyer practicing in the State of Wisconsin, Milwaukee County, with an office at 230 W. Wells St., Milwaukee, Wisconsin.

11. The events described in this Complaint took place in Milwaukee County, State of Wisconsin.

12. Unknown insurance companies are liability insurance carriers for certain defendants.

FIRST CAUSE OF ACTION

13. This Cause of Action is between plaintiff Leaf and defendants Supreme Court, BAPR, Sternberg, and Korte.

14. Plaintiff Leaf alleges, as though specifically set forth, the allegations contained in paragraphs 1,2,4,5, 6, and 7.

15. In April 1988 a complaint against plaintiff Leaf was filed with BAPR relating to a then pending legal matter.

16. Plaintiff Leaf attempted to communicate with her clients who were the parties in the legal matter involved in the BAPR complaint and whose interests were at stake, and was forbidden from so communicating with her clients by the defendants named herein.

17. Leaf had previously entered a contract with her clients to keep them fully informed of all aspects of their

legal matters, and matters potentially affecting those interests, and was prohibited by the defendants from fulfilling her contract and exercising her rights guaranteed under the first, fourth, fifth, and fourteenth amendments to the Constitution of the United States to freedom of speech, association, and the right to contract.

18. Defendants herein, under color of state law, the rules of the BAPR, along with other persons unknown to the plaintiff, have caused or permitted the plaintiff, a citizen of the United States, to be subjected to the deprivation of rights, privileges, and immunities secured to her by the Constitution and laws of the United States in prohibiting her from communicating with her clients regarding a matter that affected their legal interests. Defendants' ac-

tions also unlawfully interfered with Leaf's proprietary approach to her practice of law.

19. The defendants cited SCR 21.14 and 22.24 as the authority to prevent Leaf from communicating with her clients. A violation of SCR 21.14 and 22.24 can be viewed by BAPR as misconduct and subject Leaf to disciplinary proceedings. Plaintiff alleges that SCR 21.14 and 22.24 are unconstitutional on their face and as applied herein in that they are overbroad and encompass within their coverage activities which are clearly protected by the guarantees of the first amendment to the Constitution of the United States and are contrary to the due process clause of the fourteenth amendment to the United States Constitution.

20. Leaf alleges that SCR 21.14 and 22.24 are unconstitutional on their face

and as they are applied herein in that they are susceptible to sweeping and improper application to protected activities in violation of the first and fourteenth amendments to the United States Constitution, and are not reasonably and rationally related to a valid regulatory purpose.

21. Leaf alleges that the communications prohibited by the defendants, allows the defendants to shield themselves from Leaf's clients determining whether the clients' rights have been infringed or violated by defendants and effectively insulates them and others, from any resort to the courts that clients may be lawfully entitled to.

22. Leaf alleges that SCR 21.14 and 22.24 are unconstitutional on their face and as applied herein and violate plaintiff's rights under the United

States Constitution in that they prohibit a whole panoply of activities which are constitutionally protected, including the right of an attorney to fully disclose to clients information relative to their legal matters, the right of the public to be informed about legal matters, the conduct of lawyers in legal matters, and the activities of the Wisconsin Supreme Court.

23. Accordingly, unless and until her prayer for relief in this complaint is granted, plaintiff has reason to believe that her rights to freedom of speech, freedom of association, freedom of inquiry and thought, due process of law, equal protection of the laws, the right to contract, and the right to privacy, will continue to be denied through infringement, harassment, threats, burdens, and other subversive tactics of the

defendants. The relief demanded is essential, not only to prevent the interference with plaintiff's constitutional rights but also to prevent selective abuse by BAPR and its extended agents. Therefore, unless the relief prayed for is granted, plaintiff will suffer serious, immediate, and irreparable injury in that she will continue to be deterred, intimidated, hindered, and prevented from exercising fully and vigorously her most fundamental constitutional rights.

24. The same "chilling" effect on her first amendment rights will result from the threats of action by the defendants against the plaintiff Leaf even though these threats may never be carried out or ultimately fail. Irreparable injury is being done to the plaintiff Leaf because she is deterred by the negative personal and professional impact by

possible BAPR misconduct disciplinary procedures from fully, vigorously, and peacefully exercising her constitutional rights.

25. Plaintiff Leaf has no adequate remedy at law. The deterrence to and the prevention of the free exercise of her rights cannot be removed by successful defenses to BAPR disciplinary and administrative prosecutions.

26. No injury will be sustained by the public or defendants by the issuance of an injunction.

WHEREFORE, plaintiff Leaf prays that this Honorable Court:

A. Issue a declaratory judgment declaring that SCR 21.14 and 22.24 are null and void on their face and as applied herein as violative of the Constitution of the United States.

B. Issue a declaratory judgment, declaring that the actions of the plaintiff Leaf herein are "protected" by the Constitution of the United States under the first, fourth, fifth, and fourteenth amendments to the United States Constitution.

C. Permanently enjoin defendants, their agents, assistants, successors, employees, attorneys, and all persons acting in concert or cooperation with them at their direction or under their control, from: further and future enforcement, operation, or execution of SCR 21.14 and 22.24 and from threatening, harassing, deterring, discouraging, or otherwise interfering with plaintiff's exercise of her rights under the United States Constitution and laws.

D. Allow plaintiff her costs herein, including reasonable attorney's fees, and

such other relief as may appear to the court to be equitable and just.

SECOND CAUSE OF ACTION

27. This cause of action is between plaintiffs Leaf and Haynes and defendants Supreme Court, BAPR, Sternberg, Korte, and Stierman.

28. Plaintiff Leaf and Haynes allege as though specifically set forth, the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8.

29. Plaintiff Leaf, a white female, and plaintiff Haynes, a black male, have been business associates for many years. Leaf has often used Haynes as a consultant and vice versa.

30. The defendants herein have for approximately six years investigated plaintiffs Leaf and Haynes and their relationship, said investigation being

promulgated and sustained by defendants for racial and personal vindictiveness under the cloak of BAPR.

31. As part of the defendants' purported investigations, the defendants required the plaintiff Leaf to provide information and documents of such frequency and scope as to be intentionally and maliciously burdensome on Leaf, that it became impossible for Leaf to meet the demands of the defendants without causing irreparable harm to Leaf's personal and professional interests. The defendants made the burdensome demands on Leaf under color of state law and the Rules of Professional Conduct for Attorneys.

32. The defendants' burdensome demands on Leaf were made with the intent that it would be impossible for Leaf to fully comply, and hence, misconduct charges for failure to cooperate could be

filed by defendant BAPR, with the accompanying adverse impact on her professional practice and income. The malicious intentions of the defendants are to create spurious misconduct charges against her and thus BAPR disciplinary actions where none would otherwise exist.

33. Plaintiff Leaf having acquired a property interest in her law license, as a citizen of the United States, is entitled to continue to conduct her professional practice free from arbitrary and capricious intrusions and interference by the defendants named herein and persons acting under their supervision or control.

34. In addition to the arbitrary and capricious interference in Leaf's law practice, the frequent and overly broad investigations of the defendants have reached into the business activities of

plaintiff Haynes by demanding intrusive and private information relative to Haynes' business activities, not from Haynes, but from Leaf. These actions by the defendants were intentional and with malice and with the intent to interfere with, and did so interfere with, plaintiffs Leaf and Haynes freedom of speech, freedom of association, and right to privacy and contract guaranteed under the first, fourth, fifth, and fourteenth amendments to the Constitution of the United States.

35. The defendants' arbitrary , intentional, malicious, and capricious intrusive investigations of Leaf and Haynes, because of the threat of misconduct charges against Leaf, have a "chilling" effect on Leaf and Haynes' business and contractual relationships, including any association with each other, and

works to deprive the plaintiffs of the right to make and enforce contracts, the right to equal access to the judicial process: to sue, be parties to, give evidence; the right to full and equal benefit of all laws and proceedings for the security of persons and property; and the right to be subjected to like punishments, pains, penalties, taxes, licenses and exactions of every kind, as protected by 42 U.S.C. sec. 1981.

36. Plaintiffs Leaf and Haynes' professional and business reputations and activities have been damaged, their livelihoods injured, and they have been subjected to loss of property by the above mentioned actions of the defendants.

37. In carrying out the acts and conduct complained of herein and depriving plaintiffs of their rights as described herein, the defendants acted

intentionally by reason of and because of plaintiff Haynes' race, black, and plaintiff Leaf's association with him. By their acts and conduct, the defendants have intentionally and maliciously discriminated against the plaintiffs. The acts and conduct of the defendants have caused both plaintiffs severe emotional strain, psychological damage, and infringed upon their personal dignity and otherwise caused the plaintiffs to suffer grave and irreparable injury.

38. Each of the defendants, individually and in concert with the others, acted under pretense and color of state law and their official capacities, but the acts were beyond the scope of their jurisdiction and without authorization of law and in abuse of their powers, and each defendant acted wilfully, knowingly and with specific intent to deprive

plaintiffs of their rights and property.

39. In light of these deprivations, the plaintiffs have and will continue to suffer immediate injury and irreparable harm to their professional reputations and income and to their personal lives.

40. If the actions and investigations of the defendants are temporarily and permanently enjoined and restrained, the defendants will suffer no prejudice whatsoever pursuant to such restraint or injunction.

41. In light of these deprivations that are per se violative of the constitutional rights of the plaintiffs, the plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs Leaf and Haynes pray that this Honorable Court:

A. Issue a temporary restraining

order restraining all of the defendants named herein, their agents, servants, and employees, and all persons and agencies acting in concert or participation with them from proceeding with any discriminatory investigations and proceedings against the plaintiffs relating to any potential disciplinary action in order to preserve the status quo and to prevent immediate and irreparable injury to plaintiffs through the deprivation of their constitutionally protected right to due process and equal protection under the law pending the outcome of this action.

B. Following a trial, issue a permanent injunction permanently restraining and enjoining defendants as described in "A" above.

Plaintiffs further demand judgment

against the defendants and each of them, jointly and severally, as follows:

C. Awarding plaintiff Leaf compensatory damages of five hundred thousand dollars ($500,000) and punitive damages of ten million dollars ($10,000,000).

D. Awarding plaintiff Haynes compensatory damages of one hundred thousand dollars ($100,000) and punitive damages of five million dollars ($5,000,000).

E. Awarding each plaintiff their attorney's fees and costs of this action.

THIRD CAUSE OF ACTION

42. This cause of action is between plaintiffs Leaf and Haynes and all of the defendants named.

43. Plaintiffs Leaf and Haynes allege as though specifically set forth, the allegations contained in paragraphs 1 through 11, and 28 through 37.

44. Plaintiffs allege that in doing the acts and things above complained of, the defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States.

45. In furtherance of the conspiracy, defendants Henderson and Levihn abused legal process by filing a civil lawsuit in Milwaukee County, Wisconsin, in September 1987, against plaintiffs Leaf and Haynes, with the sole purpose and intent to embarrass and humiliate plaintiffs, and damage their reputations, and did so embarrass, humiliate, and damage the reputations of plaintiffs and continue to do so. The subject matter of the lawsuit was the same as the subject matter of the investigations by the other

defendants.

46. The actions and conduct of all of the defendants were done under color of state law, and with a invidiously racial discriminatory motive.

WHEREFORE, plaintiffs demand judgment against the defendants, and each of them, jointly and severally, as follows:

A. Awarding plaintiff Leaf compensatory damages of five hundred thousand dollars ($500,000), and punitive damages of fifteen million dollars ($15,000,000).

B. Awarding plaintiff Haynes compensatory damages of one hundred thousand dollars ($100,000), and punitive damages of fifteen million dollars ($15,000,000).

C. Awarding each plaintiff their attorney's fees and costs of this action.

D. Grant such other and further

relief as this Court deems just and proper.

Demand for Trial By Jury

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs hereby demand trial by jury in this action for all issues so triable.

Respectfully submitted,
LINDA A. LEAF and ANDREW B. HAYNES,

By: _____
One of Their Attorneys

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Linda A. Leaf
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LINDA A. LEAF and ANDREW B. HAYNES,
Plaintiffs,

89 C 317

v.

SUPREME COURT OF THE STATE OF WISCONSIN, BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY, WISCONSIN STATE PUBLIC DEFENDER OFFICE, WISCONSIN DEPARTMENT OF INDUSTRY, LABOR, AND HUMAN RELATIONS, GERALD STERNBERG, ROY KORTE, CHARLES STIERMAN, RUDOLPH REGEZ, JOHN ROETHE, JEANANNE DANNER, PAUL DALLAS, BRIAN HENDERSON, LYNNE LEVIHN, LINDA RUETTEN, NICHOLAS CHIARKAS, FREDERICK MILLER, HOWARD LUSTIG, and UNKNOWN INSURANCE COMPANIES,
Defendants.

AMENDED COMPLAINT

PLAINTIFFS LINDA A. LEAF AND ANDREW B. HAYNES, by Charles L. Ollivier their attorney and co-counsel Linda A. Leaf, state:

JURISDICTION

This is a civil action seeking declaratory, injunctive, and equitable relief,

and damages ,for deprivation under color of law of plaintiffs' rights, privileges, and immunities under the United States Constitution, and its Amendments, Jurisdiction is invoked pursuant to: 28 U.S.C. sect. 1331, 1343, 2201, and 2202; 42 U.S.C. sect. 1981, 1983, 1985, 1986, and 1988; and the Constitution of the United States, more particularly Article Four, and the First, Third, Fourth, Fifth, Ninth, Tenth, Thirteenth, and Fourteenth Amendments thereto, The relief sought in this action is more fully set out below.

CAUSES OF ACTION

Count I - Gag Rule. For injunctive and declaratory relief in that SCR 21.14 and 22.24 were used, continue to be used, and will be used by BAPR to prohibit attorneys from revealing actions of BAPR which may impact on their clients' interests. Here these rules were used by BAPR to

prevent LEAF from advising her clients, in a pending state lawsuit, that the attorney for the opposing party had made disciplinary complaints to BAPR which involved LEAF's clients' legal rights and interests.

Count II - Unreasonable Search & Seizure. For declaratory and injunctive relief in that SCR 22.07, 21.14, and 22.24 were used, continue to be used, and will continue to be used by BAPR to attempt to obtain client records of respondent attorneys, other than those of complaining witnesses, without subpoena or notice to those clients and while preventing the respondent attorney from notifying the clients of such attempt in order to allow the clients to assert their federal constitutional rights, privileges, and immunities. Here LEAF was prevented by BAPR, under application of these Rules, from

advising her business associates, her clients and their business associates and their families that BAPR was attempting to obtain their records, preventing these citizens from asserting their constitutional rights, privileges, and immunities.

Count III - Constitutional Limitations. For declaratory and injunctive relief in that it is the stated policy and procedure of the Wisconsin Supreme Court and BAPR that disciplinary proceedings are not bound by federal constitutional rights and limitations except for the respondent attorney's rights against self-incrimination.

Count IV - Pattern of Practice. For declaratory and injunctive relief in that BAPR maintains a policy and procedure of initiating charges against attorneys, then closing the case without allowing a

hearing or making a finding. That pursuant to BAPR policy and procedure these unproven charges are then used to establish a misconduct violation entitled "pattern of practice". That attorneys have been and will continue to be found guilty of misconduct based solely upon these untried accusations as constituting a "pattern of practice" violation.

Count V - Constitutional Violations. For declaratory and injunctive relief, and damages for violation of the constitutional rights of both HAYNES and LEAF which occurred prior to and concurrent with LEAF's disciplinary hearing and the Wisconsin Supreme Court decision. The referee and Wisconsin Supreme Court refused to hear these constitutional claims.

Count VI - Conspiracy. For declaratory and injunctive relief, and damages for a

conspiracy to violate the constitutional rights of HAYNES and LEAF.

Count VII - Refusal to Prevent Conspiracy. For damages for failure to prevent the constitutional violations and the conspiracy to commit said violations.

PARTIES

1. Plaintiff Linda A. Leaf (hereafter "LEAF") is an adult citizen of the United States and the State of Wisconsin, residing at all times mentioned herein in Milwaukee, Wisconsin. Plaintiff Leaf is a licensed attorney admitted to practice under the Supreme Court of Wisconsin, and has been engaged in the practice of law since 1975 in Milwaukee, Wisconsin. She is a Caucasian female.

2. Plaintiff Andrew B. Haynes (hereafter "HAYNES") is an adult citizen of the United States and the State of Wisconsin, residing at all times mentioned herein in

Milwaukee, Wisconsin. He is a black male.

3. Defendant Supreme Court of Wisconsin is the highest court of the State of Wisconsin having appellate and supervisory jurisdiction over all Wisconsin courts. It also has the responsibility to regulate the members of the state bar of Wisconsin and promulgates the rules of professional conduct which are the regulations and standards governing the practice of law in the State of Wisconsin. The Supreme Court is located in the City of Madison, Wisconsin.

4. Defendant Board of Attorneys Professional Responsibility (hereafter "BAPR") is an arm of the Wisconsin Supreme Court, to assist in the discharge of the court's responsibility to supervise Wisconsin lawyers. BAPR is located at 611 North Broadway, Milwaukee, Wisconsin.

5. Defendant State Public Defender Office

is a Wisconsin state agency charged with providing for the legal representation of indigent citizens facing state criminal charges. This office maintains a list of private attorneys to whom such cases are assigned for legal representation. LEAF was an attorney member of that assignment list.

6. Defendant Job Service Division, Wisconsin Department of Industry, Labor and Human Relations (hereafter "JOB SERVICE") is a state agency charged with, inter alia, the duty of regulating and administering the state unemployment compensation laws. It is located in Milwaukee, Wisconsin.

7. Defendant Gerald Sternberg (hereafter "STERNBERG") is the Administrator of BAPR. He is sued in his official and individual capacities.

8. Defendant Roy Korte (hereafter

"KORTE") was a legal assistant for BAPR. He is being sued in his official and individual capacities.

9. Defendant Charles Stierman (hereafter "STIERMAN") is a lawyer practicing in the State of Wisconsin, County of Milwaukee, employed by the law firm of Habush, Habush, and Davis, at 777 East Wisconsin Avenue, Milwaukee, Wisconsin. He is the Chairman of the District 2 Professional Responsibility Committee of BAPR. He was also the most recent BAPR investigator assigned to investigate LEAF. He is being sued in his official and individual capacities.

10. Defendant Rudolph P. Regez (hereafter "REGEZ") is a lawyer practicing in the State of Wisconsin with an office at 2651 22nd Street, Monroe, Wisconsin. He had been the head of the predecessor organization to BAPR. He was appointed by the

Wisconsin Supreme Court as referee to conduct the disciplinary hearing against LEAF. He is being sued in his official and individual capacities.

11. Defendant John W. Roethe (hereafter "ROETHE") is a lawyer practicing in the State of Wisconsin, with an office at 24 North Henry Street, Edgerton, Wisconsin. He was appointed by BAPR to prosecute BAPR's case against LEAF. He is being sued in his official and individual capacities.

12. Defendant Jeananne Danner (hereafter "DANNER") is a Deputy Administrator for BAPR. She is being sued in her official and individual capacities.

13. Defendant Paul Dallas, a/k/a/ Lester Ackerman, (hereafter "DALLAS") is a private citizen, residing at a location known only to BAPR, who acted as an agent for BAPR. He is a Caucasian male.

14. Defendant Brian Henderson (hereafter "HENDERSON") is a lawyer practicing in the State of Wisconsin, with an office at 230 West Wells Street, Milwaukee, Wisconsin.

15. Defendant Lynne Levihn (hereafter "LEVIHN") is a lawyer practicing in the State of Wisconsin, with an office at 230 West Wells Street, Milwaukee, Wisconsin.

16. Defendant Linda Ruetten, a/k/a Linda Edmondson, (hereafter "RUETTEN") is a private citizen, residing in Milwaukee County, Wisconsin, who acted as an agent for BAPR.

17. Defendant Nicholas L. Chiarkas (hereafter "CHIARKAS") heads the State Public Defender Office. He is being sued in his official and individual capacities.

18. Defendant Frederick H. Miller (hereafter "MILLER") is an Assigned Counsel Coordinator with the State Public Defend-

er Office. He is being sued in his official and individual capacities.

19. Defendant Howard Lustig (hereafter "LUSTIG") is an administrative law judge for the Department of Industry, Labor, and Human Relations. He is being sued in his official and individual capacities.

20. Unknown insurance companies are liability insurance carriers for certain defendants.

21. The majority of the events described in this Amended Complaint took place in Milwaukee County, State of Wisconsin.

COUNT I
Gag Rule
42 USC 1983
SCR 21.14& 22.24.

22. This cause of action is between plaintiff LEAF and defendants Wisconsin Supreme Court, BAPR, STERNBERG, and KORTE.

23. Plaintiff LEAF incorporates by refer-

ence the allegations of Paragraphs 1 through 4, 7, and 8 above.

24. In April 1988 a complaint against LEAF was filed with BAPR relating to a then pending state legal matter, by the attorney representing the opposing party in that matter.

25. LEAF attempted to communicate with her clients who were the parties in the legal matter involved in the BAPR complaint and whose interests were at stake, and was forbidden from so communicating with her clients by the defendants named herein.

26. LEAF had a duty to her clients and had previously entered a contract with her clients to keep them fully informed of all aspects of their legal matters, and matters potentially affecting their interests, and was prohibited by the defendants from fulfilling her duty to

her clients and their contract and exercising her rights guaranteed under the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States to freedom of speech, association and the right to contract.

27. That these clients have an absolute right to know all matters which may affect their case, including events affecting the ability of their attorney to represent them, the tactics and allegations of the opposing party and counsel. Here opposing counsel, the opposing party, BAPR, and LEAF had this knowledge; LEAF's clients did not.

28. Defendants herein, under the color of state law and the rules of the Wisconsin Supreme Court, along with other persons unknown to LEAF, have caused or permitted LEAF, a citizen of the United States, to be subjected to the deprivation of

rights, privileges, and immunities secured to her by the Constitution. She was prohibited and continues to be prohibited from communicating with her clients regarding matters that affected their legal interests and rights. Defendants' actions also interfered, without cause, with LEAF's proprietary approach to her practice of law.

29. The defendants cited Wisconsin Supreme Court Rule (hereafter "SCR") 21.14 and 22.24 (atch "A") as the authority to prevent LEAF from communicating with her clients. A violation of SCR 21.14 and 22.24 is viewed by BAPR as misconduct and would subject LEAF to disciplinary sanctions. LEAF alleges that SCR 21.14 and 22.24 are unconstitutional on their face and as applied in that they are overly-broad and encompass within their prohibitions activities which are clearly pro-

tected by the guarantees of the First Amendment to the Constitution of the United States and are contrary to the due process clause of the Fourteenth Amendment.

30. LEAF alleges that SCR 21.14 and 22.24 are unconstitutional on their face and as applied herein in that they are susceptible to sweeping and improper application to protected activities in violation of the First and Fourteenth Amendments to the United States Constitution, and are not reasonably and rationally related to a valid regulatory purpose.

31. LEAF alleges that the communications prohibited by the defendants, allows the defendants to shield themselves from Leaf's clients' determining whether the clients' rights have been infringed or violated by defendants and effectively insulates them and others, from any re-

course to the federal courts to which her clients may be lawfully entitled.

32. LEAF alleges that SCR 21.14 and 22.24 are unconstitutional on their face and as applied herein and violate LEAF's and other citizens' rights under the United States Constitution in that they prohibit a whole panoply of activities which are constitutionally protected, including the right of an attorney to fully disclose to clients information relative to their legal matters, the right of the public to be informed about legal matters, the conduct of lawyers in legal matters, and the activities of the Wisconsin Supreme Court.

33. Accordingly, unless and until her prayer for relief in this amended complaint is granted, LEAF has reason to believe that her and her clients' and other attorneys' rights to freedom of

speech, freedom of association, freedom of inquiry and thought, due process of law, equal protection of the laws, the right of contract, and the right of privacy, will continue to be denied through infringement, harassment, threats, burdens, and other subversive tactics of the defendants. The relief demanded is essential, not only to prevent the interference with LEAF's constitutional rights but also to protect the rights of her clients and to prevent self-serving selective abuse by BAPR and its extended agents. Therefore, unless the relief prayed for is granted, LEAF and her clients will suffer serious immediate and irreparable injury in that she will continue to be deterred, intimidated, hindered, and prevented from exercising fully and vigorously her most fundamental constitutional rights.

34. The same chilling effect on her First Amendment rights will result from threats of action by the defendants against LEAF. Irreparable injury is being done to LEAF because she is deterred by the negative personal and professional impact of possible BAPR disciplinary misconduct procedures from fully, vigorously, and peacefully exercising her constitutional rights, including property interests.

35. LEAF has no adequate remedy at law. The deterrence to and the prevention of the free exercise of her rights can not be removed by successful defenses to BAPR disciplinary and administrative prosecutions.

36. No injury will be sustained by the public or the defendants by issuance of an injunction.

37. That LEAF continues to be barred from advising her clients and other citizens

of the matters complained of above.

38. That BAPR will continue to use the subject rules to bar other attorneys in like circumstances from such communication with their clients and other citizens.

COUNT II
Unreasonable Search & Seizure
42 USC 1983
SCR 22.07. 21.14, & 22.24.

39. This cause of action is between plaintiffs LEAF and HAYNES and defendants Wisconsin Supreme Court, BAPR. STERNBERG, STIERMAN, KORTE, ROETHE, and REGEZ.

40. Plaintiffs adopt and incorporate by reference paragraphs 1 through 11 above.

41. In 1986 four complaints against LEAF were filed with BAPR which include allegations of improper acts by HAYNES.

42. In 1986 BAPR made certain inquiries to LEAF regarding LEAF and HAYNES concerning their activities with the four

complaining witnesses. Both plaintiffs provided answers, and fully answered all the BAPR inquiries.

43. a. On January 26, 1989, STIERMAN, as the self-appointed BAPR investigator and acting under the color of state law, directed KORTE to command LEAF to produce certain documents and records which demanded: nine years of client records of other than the four complaining witnesses; nine years of business records; nine years of personal tax returns; nine years law office tax returns; nine years of other business tax returns; and nine years of HAYNES' records (to be produced by LEAF!).

b. This demand was made without prior finding of impropriety against LEAF and without nexus to the four complaining witnesses. STIERMAN neither requested nor conducted prior examination of LEAF's

records regarding the four complaining witnesses.

c. This demand was overly broad, invasive of the constitutional rights of LEAF's clients and business associates, the clients' business associates and families, and both plaintiffs. The demand was:

(1). unreasonable and oppressive, and intended as a form of nonjudicial punishment;

(2). not made in good faith;

(3). intended as a general "fishing expedition";

(4). lacked specificity;

(5). and, was arbitrary.

44. a. SCR 22.07 (atch "B") provides for automatic violation of the rule as "misconduct" if the respondent attorney refuses to meet every demand of BAPR.

Under the command of SCR 21.14 and 22.24 LEAF was prevented from notifying her clients and other citizens of BAPR's demand for information about them and their confidential records and from providing her clients legal counsel and advice about these actions and the clients' rights and privileges. That the clients have an absolute right to know all matters which may affect their rights and interests.

b. That there is no means to challenge the demand without incurring "misconduct". The SCR provide no procedure for prior judicial determination of the constitutionality, legality, relevancy, or correctness of BAPR demands. It provides no such procedure of prior judicial determination for respondent attorney or others to determine if such demands violate SCR 22.07(3) allowing BAPR to obtain

only "pertinent" documents.

c. That this placed LEAF in a position of automatic misconduct by her proceeding to protect her clients' rights and established a conflict between her duty of attorney-client confidentiality under SCR 20:1.6 (atch "C") with a duty to produce under SCR 22.07. BAPR violated both the "pertinent " document rule and the constitutional rights of plaintiffs, their clients, and other citizens.

45. a. LEAF was found guilty of "misconduct" when she elected to protect her clients' rights. Both the referee and the Wisconsin Supreme Court have refused to rule on the constitutionality of STIERMAN's demands which are the basis of the misconduct violation.

b. As recognized by Referee Regez, at all times LEAF has been ready, willing and able to provide BAPR all records

regarding the four complaining witnesses, and that she, in fact, did so.

46. This demand, described in paragraph 43 above, was again commanded by STIERMAN in his capacity as the self-appointed Chairman of the Investigative Meeting under SCR 22.07. For the reasons given above, LEAF chose not to comply with his unconstitutional demand.

47. Adopts and incorporates by reference paragraph 44 and 45 above.

48. LEAF as an attorney had a duty to protect the records and rights of her clients, and to advise her clients of any attempt by the state or others to subvert those rights. Additionally, to comply with STIERMAN's demands would be a violation of SCR 20:1.6 regarding confidentiality of client information.

49. Adopts and incorporates by reference paragraphs 25 through 36 of Count I as

though fully set forth herein, but adding SCR 22.07 to the Rules identified in those paragraphs.

COUNT III
Constitutional Limitations
42 USC 1983
SCR 22.07.

50. This cause of action is between plaintiffs and the Wisconsin Supreme Court, BAPR, STERNBERG, STIERMAN, ROETHE, and REGEZ.

51. Plaintiffs adopt and incorporate by reference paragraphs 1 through 11 above.

52. That it is the stated policy of BAPR and the Wisconsin Supreme Court under SCR 22.07 that attorney disciplinary procedures are not bound by federal constitutional limitations except for the respondent attorney's right to assert the Fifth Amendment right against self-incrimination. LEAF has not asserted such right.

53. That LEAF has attempted to assert a

number of other constitutional rights on behalf of herself, her clients, her business associates, and HAYNES.

54. That in attorney disciplinary proceedings BAPR and the Wisconsin Supreme Court have refused and continue to refuse to recognize any constitutional limitations or rights of any person except for the respondent attorney's right against self-incrimination.

55. That this policy and SCR 22.07 are unconstitutional on their face and as generally applied in that they are susceptible to sweeping and improper application to protected activities of any respondent attorney, the attorney's clients, and other citizens, in violation of the First, Fourth, Fifth, and Fourteenth Amendments and other constitutional rights, privileges and immunities. As applied, they are not reasonably and

rationally related to valid regulatory purpose, and are an open invitation to abuse.

56. That the relief demanded is essential not only to protect her rights and the rights of her clients and other citizens, but also to prevent selected abuse by BAPR and its extended agents. Therefore, unless the relief prayed for is granted, LEAF, her clients, other attorneys, and other citizens will suffer serious immediate and irreparable injury in that they will be deterred, intimidated, hindered, and prevented from exercising fully and vigorously their most fundamental constitutional rights.

57. That LEAF, her clients, other attorneys, and other citizens have no adequate remedy at law. The chilling effect on the free exercise of their rights can not be removed by successful defenses to BAPR

disciplinary and administrative prosecutions.

58. Adopts and incorporates by reference paragraph 33 of Count I.

59. No injury will be sustained by the public or the defendants by issuance of an injunction.

COUNT IV
Pattern of Practice
42 USC 1983.

60. This cause of action is between plaintiff LEAF and defendants Wisconsin Supreme Court and BAPR.

61. Adopts and incorporates by reference the allegations contained in paragraphs 1 through 4 above.

62. That BAPR has a policy and procedure of initiating charges against attorneys, then closing the case without allowing a hearing or making a finding. The purpose of this is to build a purported history against attorneys, to later charge that

even though there are no individual violations, the actions indicate a "pattern of practice" which in and of itself is considered a violation. Since 1983 BAPR has cultivated a series of complaints against LEAF, which it knew or should have known to be groundless, with the purpose of manufacturing a "pattern of practice" violation. That this Pattern of Practice policy and procedure has been applied and will continue to be applied not only gainst LEAF but also other attorneys.

63. Adopts and incorporates by reference paragraphs 33, 34 and 36 of Count I.

COUNT V
Constitutional Violations
42 USC 1983, 1981.

64. This cause of action is between plaintiffs LEAF and HAYNES and all the named defendants in their official and individual capacities.

65. Plaintiffs LEAF and HAYNES adopt and incorporate by reference the allegations contained in paragraphs 1 through 21 above.

66. PAUL DALLAS and DIANE DEMERCHANT. In 1986, DALLAS, a self-avowed white supremacist, acting under a malicious racial motive, participated in a BAPR plan to destroy HAYNES' reputation and businesses by the bringing of false civil and criminal charges against HAYNES. He enlisted DEMERCHANT to assist him in his scheme. Under his direction and control DEMERCHANT made false statements and complaints regarding HAYNES to the Milwaukee police department, the District Attorney's Office in Milwaukee, the Federal Bureau of Investigation, and other agencies. These agencies did not act on these complaints.

67. DALLAS and DEMERCHANT received in-

structions from BAPR and its coconspirators to illegally obtain records of HAYNES and LEAF for the purpose of cultivating complaints against plaintiffs. Acting pursuant to BAPR instructions, DEMERCHANT and DALLAS went to HAYNES' office with two Milwaukee police officers. DEMERCHANT and DALLAS stole business files belonging to HAYNES and LEAF. When HAYNES objected, the police officers threatened him with arrest. Some of these original documents stolen from HAYNES were discovered in BAPR files during the disciplinary proceedings against LEAF.

68. DEMERCHANT and DALLAS took these stolen records to BAPR. STERNBERG, KORTE and others at BAPR used these records to develop a list of persons who had been clients of LEAF and had contact with HAYNES in order to cultivate complaints.

69. a. Acting under the direction of BAPR. DALLAS and DEMERCHANT then contacted an unknown number of clients of LEAf and attempted to persuade or coerce them into making false complaints against LEAF and HAYNES; they succeeded with two: Cathy Marefke and Gretchen Resech.

b. A third client of LEAF's Debra Breese was contacted. When she refused to make a complaint against LEAF and HAYNES, DALLAS and DEMERCHANT threatened to make a false complaint to the Child Protective Services alleging sexual abuse of her children because she allowed them contact with black people. She again refused.

c. Shortly thereafter Michael D. Pochert, an Investigator for the Milwaukee Child Protective Services, made an unannounced interview with Ms. Breese at her home to investigate a complaint of her sexually abusing her children and

allowing sexual abuse by others. Mr. Pochert found the charges groundless.

d. Ms. Breese received a race-based hate letter (atch "D") shortly after the threats by DALLAS and DEMERCHANT, which made charges identical to those threatened by DALLAS and DEMERCHANT.

e. That these race-based false charges and coercions were done at the direction of BAPR.

70. DALLAS, DEMERCHANT and others then brought false allegations against HAYNES via LEAF by complaints to BAPR. They undertook this action to punish LEAF, a white woman, for her social, business and professional association with HAYNES, a black man, and to contribute to BAPR'S efforts to frame plaintiffs, in order to destroy their personal and professional association.

71. LINDA RUETTEN. That RUETTEN, another client of LEAF, who had used HAYNES' services, also had contact with BAPR. RUETTEN worked with BAPR for approximately six months, unknown to LEAF, while remaining a client of LEAF, and helped manufacture false charges against plaintiffs. This effort eventually resulted in RUETTEN making BAPR-authored complaints against plaintiffs, and under BAPR instructions, she repeatedly perjured herself.

72. Using the four complaints authored and manufactured by the conspirators including STERNBERG, KORTE, and others, BAPR made an initial inquiry to LEAF on May 19, 1986, to which both LEAF and HAYNES responded in full.

73. The complaints against LEAF then sat dormant in 1986, 1987, and 1988.

74. HENDERSON and LEVIHN. Pursuant to

instructions by BAPR, DALLAS and DEMERCHANT contacted HENDERSON and LEVIHN to file a spurious lawsuit against LEAF and HAYNES. Such lawsuit was filed in September 1987 by HENDERSON and LEVIHN alleging injury to DEMERCHANT, not to properly pursue justice, rather, it was to effect certain improper goals devised by BAPR and was also an attempt by DALLAS and HENDERSON and LEVIHN to extort money from HAYNES. Neither HAYNES nor LEAF were ever served, nor otherwise made aware of the suit until HENDERSON and DALLAS telephoned HAYNES demanding $50,000. HAYNES refused and demanded to be served with a summons; a summons was never served. HAYNES later located the lawsuit and obtained a copy of the complaint. Eventually the suit was dismissed for want of prosecution.

75. JOB SERVICE DIVISION, Wisconsin De-

partment of Industry, Labor, and Human Relations, and HOWARD LUSTIG. Pursuant to BAPR instructions JOB SERVICE and LUSTIG had taken action to falsely declare HAYNES an employee of LEAF. LUSTIG joined the conspiracy against LEAF and HAYNES for the preplanned purpose of ruling HAYNES was an employee of LEAF and that he exercised all his decisions, rulings and acts to effect the preplanned outcome. The purpose of this action was to lend credibility to BAPR's later charge, found false by referee and the Wisconsin Supreme Court, that LEAF had lied to BAPR by stating that HAYNES was not her employee, and to support STIERMAN's unconstitutional demand for HAYNES' records to be produced by LEAF as his employer.

76. CHARLES STIERMAN. In 1987, in the case of Lynn Smith v. Guaranty Savings

and Loan, et al, LEAF, with the active assistance of HAYNES, obtained a substantial settlement for her client against the defendant, a client represented by Charles Stierman of Habush, Habush, and Davis. All subsequent malfeasance of STIERMAN arose for his desire to punish LEAF and HAYNES for this victory of a woman and a black man over him and his employer.

77. Sometime in late 1988, STIERMAN, as head of BAPR's District 2 Committee, entered the BAPR case against LEAF with full knowledge of his actual conflict of interest created by involving himself in any BAPR matter concerning LEAF. STIERMAN appointed himself to investigate LEAF. In intentional violation of Wisconsin Supreme Court Rule 22.05(4) (atch "E"), STIERMAN did not give LEAF notice of his self-appointment in order to pre-

vent her from exercising her absolute right to have him removed as investigator and driving force.

78. a. Without undertaking any appropriate independent investigation to determine the facts or the credibility or motive of the complaining witnesses, and with full knowledge of the collusion of STERNBERG and KORTE with DALLAS, DEMERCHANT, and RUETTEN to manufacture these false complaints against LEAF and HAYNES, STIERMAN caused KORTE to issue a demand for information and records of both LEAF and HAYNES, which he STERNBERG, KORTE and unknown others at BAPR had specifically developed to put LEAF in a legal quandary between conflicting duties due to its unconstitutional breadth. her duty to protect her clients rights. and its exceptionally burdensome nature.

b. This demand required LEAF to

produce: nine years of client records; nine years of business records; nine years of personal tax returns; nine years of law office tax returns; nine years of other business tax returns; and nine years of HAYNES' business records (to be produced by LEAF!

c. This demand was made without a prior finding of impropriety against LEAF and without nexus to the four complaining witnesses. STIERMAN neither requested nor conducted a prior examination of LEAF's records regarding the four complaining witnesses.

d. This demand was intentionally overly broad, invasive of the constitutional rights of LEAF's clients and her business associates, the clients' business associates and families, and both LEAF and HAYNES. The demand was:

(1). unreasonable and op-

pressive, and intended as a form of nonjudicial punishment;

(2). not made in good faith;

(3). intended as a general "fishing expedition";

(4). lacked specificity;

(5). and was arbitrary.

e. This demand was intended to cause an automatic violation of SCR 22.07(4), as described in Court II, paragraphs 44, 45 and 48.

f. It was sent under the signature of KORTE to prevent LEAF from discovering the improper involvement of STIERMAN.

g. LEAF was unable to comply with this unconstitutional and illegal demand in that it violated the constitutional rights of the persons described above.

h. The demand resulted in her filing her original federal complaint on March

14, 1989 (ref: Complaint, Court II).

79. a. STIERMAN thereupon appointed himself as Chairman of the Investigative Committee to determine whether further action should be taken against LEAF. He appointed its other members. He issued a demand for records and information identical to the unconstitutional illegal demand identified above and issued a notice for LEAF to appear on April 27, 1989, before his Investigative Committee.

b. On the evening of April 25, 1989, less than 48 hours prior to the committee meeting, HAYNES was served with a subpoena to appear at the investigative meeting. This resulted in the plaintiffs' filing a Motion for a Temporary Restraining Order. On April 27, 1989, this Court denied the Motion for TRO and BAPR's Motion To Dismiss, but stayed the federal action pending completion of the state

court action; the court having been falsely assured that LEAF could raise all of her constitutional issues in the state forum. Throughout the state disciplinary proceeding LEAF attempted to raise the constitutional issues and was refused to be allowed to develop evidence of the constitutional violations, and refused hearing on these issues.

80. After this Court's ruling, HAYNES appeared at the Investigative Meeting but refused to say anything, not even accepting the oath or asserting his right against self-incrimination. STIERMAN later falsified the hearing transcript to indicate HAYNES asserting such right; this was done to support BAPR's false claim that the Fifth Amendment was a "very intricate part of their (LEAF and HAYNES) claim. It has been throughout, and they have dropped it...". (ROETHE,

4.27/90 transcript, pa. 2, In. 3); yet, "...with respect to the invocation of the fifth amendment, first of all it has to be asserted. It has yet to be asserted, in this case." (ROETHE, 3/31/90 transcript, pa. 14, In. 21). LEAF did not attend. The four complaining witnesses neither attended nor were subpoenaed.

81. STIERMAN caused the Investigative Committee to recommend further action against LEAF. He, STERNBERG, KORTE and unknown others authored a complaint against LEAF falsely charging various SCR violations. This original complaint (para. 25d, 26) included as an element of a charge of professional misconduct plaintiffs' filing their federal complaint against BAPR; this allegation was later dropped.

82. On May 31, 1989, STIERMAN issued an Investigative Report in which he falsi-

fied facts in order to justify his condemnation of LEAF and HAYNES. Included in this falsification is his false version of the reason for the 1986-1989 delay (atch "F") versus the true version given to this Court by the Wisconsin Department of Justice attorney Warren Weinstein on April 28, 1989 (atch "G").

83. a. JOHN W. ROETHE. ROETHE was specially selected by BAPR to prosecute LEAF. Throughout his prosecution of the case against LEAF, and with BAPR authorization and assistance, he suborned perjury of all BAPR's witnesses, hid exculpatory evidence from LEAF, hid DEMERCHANT and DALLAS from legal process by LEAF, falsified referee orders and made intentional misrepresentations to the referee, falsified evidence, tampered with evidence, and took other action intended to deny LEAF and HAYNES their constitutional

rights. That KORTE acted in a active collusion with ROETHE including misrepresentation of facts to the referee and perjury at the disciplinary hearing.

b. JEANANNE DANNER. Attorney Danner assisted in these acts by, inter alia, attempting to suppress exculpatory evidence, hiding DEMERCHANT and DALLAS from legal process by LEAF and HAYNES, making false interrogatory answers under oath, said answers being contrary to statements and testimony of BAPR witnesses.

84. a. RULDOLPH P. REGEZ. REGEZ joined the conspiracy against LEAF and HAYNES for the purpose of finding LEAF guilty and exercised all his decisions, rulings and acts to effect that preplanned outcome. These improper acts include collusion with the prosecuting attorney, providing the prosecuting attorney advice on tactics, strategy, and procedures, in-

cluding advice on how to avoid the consequences of his rulings favorable to LEAF, denying LEAF the opportunity to develop evidence of her innocence and of the malfeasance of BAPR and the complaining witnesses, and including finding LEAF guilty of violations of which she was neither charged nor tried, and violations which have no legal basis. The purpose of these acts was to "protect the institution" by knowingly violating the constitutional rights of LEAF and HAYNES. One such improper purpose being described by the referee himself "...to require that she completely disassociate herself from Haynes as a condition of practice ..." (11/19/90 referee report, pa. 18) even though HAYNES had never been charged or stood trial or been found guilty of any improper act by any governmental agency.

b. That REGEZ changed the charges against LEAF by finding her guilty of certain violations not complained of by BAPR, not charged by BAPR, and not issues at trial.

c. Adopts and incorporates by reference paragraph 106 of Count VI.

85. a. That the Wisconsin Supreme Court acted in this matter with the sole preplanned outcome of finding LEAF and HAYNES guilty. That the appointments of the specific prosecutor and referee were in furtherance of this plan, including approval of the malfeasance of BAPR personnel, of the prosecutor, and of the referee.

b. The Wisconsin Supreme Court changed the charges against LEAF by finding her guilty of violations not found by the referee, and issues at trial.

86. WISCONSIN STATE PUBLIC DEFENDER OF-

FICE, NICHOLAS L. CHIARKAS, FREDERICK H. MILLER. That during the pendency of this action, prior to the referee hearing, Nicholas L. Chiarkas and Frederick H. Miller acting under the color of their authority with the State Public Defender's Office, suspended assignment of cases to LEAF without prior hearing. Pursuant to the unconstitutional plan and instruction of BAPR, she was offered reinstatement if she would disassociate herself from HAYNES. There was no proper public purpose to be served by this action. This action was taken at the request of BAPR, including STERNBERG, STIERMAN and other unknown persons.

87. That two citizens, the plaintiffs, have been regularly subjected to secret state investigations, secret dossiers are kept on them, and BAPR has regularly caused information about them to be dis-

tributed to individuals and organizations having nothing to do with BAPR enforcement.

88. As a result of defendants' unconstitutional acts, and because HAYNES was not a party to the disciplinary proceedings against LEAF, HAYNES has been tried and convicted of unethical and criminal offenses without the opportunity for trial, to present evidence, to confront witnesses against him or to be heard. Because of this he suffers and will continue to suffer all indicia of criminal conviction except incarceration and fine. He has been denied his constitutional rights, privilege and immunities including those of due process and the equal protection of the laws. This is a defacto badge of slavery planned and executed by the defendants.

89. The defendants have for approximately

nine years investigated plaintiffs and their relationship, said investigations being promulgated and sustained by the defendants for racial and personal vindictiveness under the cloak of BAPR.

90. As part of the defendants' purported investigations, the defendants required LEAF to provide information and documents of such frequency and scope as to be intentionally and maliciously burdensome on LEAF, that it became impossible for LEAF to meet the demands of the defendants without causing irreparable harm to LEAF's personal and professional interests. The defendants made the unreasonably burdensome demands on LEAF under the color of state law and the Rules of Professional Conduct for Attorneys.

91. The defendants' unreasonable burdensome demands on LEAF were made with the intent that it would be impossible for

LEAf to fully comply, and hence, misconduct charges for failure to cooperate could be filed by BAPR, with the accompanying adverse impact on her professional practice and income. The malicious intentions of the defendants are to create spurious misconduct charges against her and thus BAPR disciplinary actions where none would otherwise exist.

92. LEAF having acquired a property interest in her law license, as a citizen of the United States, is entitled to continue to conduct her professional practice free from arbitrary and capricious intrusions and interference by the defendants named herein and persons acting under their supervision and control.

93. In addition to the arbitrary and capricious interference in LEAF's law practice, the frequent and overlybroad investigations by the defendants have

reached into the business activities of HAYNES by demanding intrusive and private information relative to HAYNES' business activities, not from HAYNES, but from LEAF. These actions by the defendants were intentional and with malice and with the intent to interfere with, and did interfere with, plaintiff's freedom of speech, freedom of association, and right to privacy and contract guaranteed under the First, Fourth, Fifth, and Fourteenth Amendments.

94. The defendants' arbitrary, intentional, malicious, and capricious intrusive investigations of plaintiffs, because of the threat of misconduct charges against LEAF, have a chilling effect on LEAF's and HAYNES' business and contractual relationships, including any association with each other, and works to deprive the plaintiffs of the right to make and en-

force contracts; the right to equal access to the judicial process, to sue, be parties to, give evidence; the right to full and equal benefit of all laws and proceedings for the security of persons and property; and the right to be subjected to like punishments, pains, penalties, taxes, licenses, and extractions of every kind, as protected by the Constitution of the United States,

95. Plaintiffs' professional and business reputations and activities have been damaged, their livelihoods injured, and they have been subjected to loss of property by the above mentioned actions of the defendants.

96. In carrying out the acts and conduct complained of herein and depriving plaintiffs of their rights as described herein, the defendants acted intentionally by reason of and because of HAYNES' race,

and LEAF's association with him. By their acts and conduct, the defendants have intentionally and maliciously discriminated against the plaintiffs. The acts and conduct of the defendants have caused both plaintiffs severe emotional strain and distress, psychological damage, and infringed upon their personal dignity and otherwise caused the plaintiffs to suffer grave and irreparable injury.

97. The defendants, individually and in concert with others, acted under pretense and color of state law and their official capacities, but their acts were beyond the scope of their jurisdiction and without authorization of law, in abuse of their powers, and each defendant acted willfully, knowingly, and with specific intent to deprive plaintiffs of their rights and property.

98. By reason of these deprivations, the plaintiffs have and will continue to suffer immediate injury and irreparable harm to their professional reputations and income and to their personal lives.

99. If the actions and investigations of the defendants are enjoined, the defendants and the public will suffer no prejudice whatsoever.

100. By reason of these deprivations that are per se violative of the constitutional rights of the plaintiffs, the plaintiffs have no adequate remedy at law.

COUNT VI
Conspiracy
42 USC 1983, 1985.

101. This cause of action is between plaintiffs and defendants STERNBERG, STIERMAN, CHIARKAS, KORTE, DALLAS, REGEZ, ROETHE, MILLER, HENDERSON, LEVIHN, RUETTEN, DANNER, LUSTIG, and certain members of the Wisconsin Supreme Court, in their

official and individual capacities.

102. Adopt and incorporate by reference paragraph 1 through 21 above, and paragraphs 64 though 98 of Count V.

103. That there existed among defendants and other individuals and state agencies, a conspiracy against LEAF and HAYNES, based upon their racial association and to discriminate against them due to their race and gender, to violate their constitutional rights, privilege and immunities. That acting in furtherance of this plan and conspiracy, the defendants reached an understanding, engaged in a sequence of events and course of conduct and otherwise agreed and conspired together, and did commit overt acts under the color of state law including, but not limited to, those described in this Count and the above Counts, That this conspiracy by the defendants was done willfully,

maliciously, and intentionally, and directly and proximately resulted in violations of the federal constitutional rights, privileges, and immunities of plaintiffs, their clients and business associates, and others, including:

1. Equal protection of the laws;
2. Right to free association and the privacy of one's associations;
3. right to free speech;
4. right to contract and enforce contracts;
5. right to privacy;
6. freedom from unreasonable search and seizure;
7. substantive and procedural due process;
8. right to impartial tribunal;
9. right to fair trial and to be free from fraudulent trial and conviction;
10. freedom of enterprise;
11. freedom from licensing requirements without adequate standards and guides.

104. WISCONSIN SUPREME COURT. That in addition to the previously complained of acts of defendants, certain unknown members of the Wisconsin Supreme Court joined the conspiracy against LEAF and

HAYNES for the purpose of furthering the conspiracy, including finding of LEAF and HAYNES guilty of false charges, exercised all their decisions, rulings, appointments, and acts to effect the preplanned outcome. That they approved actions they knew to be improper and unconstitutional and designed to violate the constitutional rights of plaintiffs. These improper acts include collusion with STERNBERG, STIERMAN, REGEZ and other individuals and agencies to deny LEAF and HAYNES of their constitutionally protected rights, immunities, and privileges. That these acts were taken on a racial and sexual prejudice to punish LEAF, a white female, and HAYNES, a black male, for their association.

105. That the conspiracy included the ordering and directing of secret state investigations, establishing and keeping

secret state dossiers, and regularly causing information about plaintiffs to be distributed to individuals and organizations having nothing to do with BAPR enforcement.

106. a. That at the core of this conspiracy was a preplanned effort to shield the Wisconsin Supreme Court and BAPR and their agents and employees and coconspirators from liability for their constitutional violations by a preplanned course of action against plaintiffs to attempt to utilize official immunity as a shield from the federal laws protecting the rights of citizens, including plaintiffs and their clients and business associates, and from the federal courts' powers to protect the rights of said citizens.

b. That this conspiracy was specifically planned to attempt to create conditions in which plaintiffs' federal claims

were inextricably inter-twined with LEAF's state disciplinary proceeding so that plaintiffs would lose, outright, the original federal court jurisdiction.

COUNT VII
Refusal to Prevent Conspiracy
42 USC 1986

107. This cause of action is between plaintiffs and defendants STERNBERG, STIERMAN, CHIARKAS, and certain unknown members of the Wisconsin Supreme Court.

108. Adopt and incorporate by reference paragraphs 101 though 106 of Count VI.

109. a. That STERNBERG, STIERMAN, CHIARKAS, and certain members of the Wisconsin Supreme Court knew of the violations of plaintiffs' federal constitutional rights, and had the power and authority to stop such violations.

b. That said defendants, in conscious and willful disregard of their duty to take such actions necessary to

prevent said constitutional violations and the conspiracy to commit said violations, refused and failed to act.

110. The basis of this conspiracy was racial and sex discrimination due to the association of a black man with a white woman.

PRAYER

WHEREFORE Plaintiffs pray the Court:

Count I
Gag Rule

111. Issue a declaratory judgment declaring that SCR 21.14 and 22.24 are null and void of their face and as applied herein as violative of the Constitution of the United States.

112. Issue a declaratory judgment declaring that the actions of plaintiff LEAF to communicate with her clients regarding BAPR are "protected" by the Constitution of the United States under the First,

Fourth, Fifth and Fourteenth Amendments.

113. Permanently enjoin defendants, their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction or under their control, from further and future enforcement, operation, or execution of SCR 21.14 and 22.24, and from threatening, harassing, deterring, discouraging or otherwise interfering with LEAF's and all other at-torneys' exercise of their rights as described herein under the Constitution of the United States.

114. Allow LEAF her costs herein, including reasonable attorney's fees, and other such relief the Court may find appropriate.

Count II
Unreasonable Search & Seizure

115. Issue a declaratory judgment declar-

ing that SCR 22.07, 21.14, and 22.24 are null and void on their face and as applied herein as violative of the Constitution of the United States.

116. Issue a declaratory judgment that the actions of plaintiff LEAF in protecting her clients' and other citizens' records as described herein are "protected" by the Constitution of the United States under the First, Fourth, Fifth, and Fourteenth Amendments.

117. Permanently enjoin defendants, their agents, assistants, successors, employees, attorneys and all persons acting in concert or cooperation with them or at their direction or under their control, from further and future enforcement, operation, or execution of SCR 22.07, 21.14, and 22.24, from enforcing or otherwise acting upon any decision against LEAF or HAYNES based upon alleged viola-

tions of said Rules, and from threatening, harassing, deterring, discouraging or otherwise interfering with plaintiffs', other attorneys' and other citizens' exercise of their rights under the Constitution of the United States based upon said Rules.

118. Allow plaintiffs their costs herein, including reasonable attorney's fees, and other such relief the Court may find appropriate.

Count III
Constitutional Limitations

119. Issue a declaratory judgment declaring the policy and Rule 22.07 of the nonrecognition of federal constitutional rights and limitations by BAPR and the Wisconsin Supreme Court are null and void on their face and as applied herein as violative of the Constitution of the United States.

120. Issue a declaratory judgment declaring that the action of plaintiffs LEAF and HAYNES herein are "protected" by the Constitution of the United States under the First, Fourth, Fifth, and Fourteenth Amendments.

121. Permanently enjoin defendants, their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction and control, from further and future action on, enforcement of, operation, or execution of said policy and SCR 22.07, and from threatening, harassing, deterring, discouraging, or otherwise interfering with LEAF's, HAY-NES', and all other attorneys' and citizens' exercise of their rights under the Constitution of the United States in attorney disciplinary proceedings.

122. Allow plaintiffs their costs herein, including reasonable attorney's fees, and other such relief the Court may find appropriate.

Count IV
Pattern of Practice

123. Issue a declaratory judgment declaring that the "pattern of practice" violation policy is null and void as applied herein as violative of the Constitution of the United States in denying attorneys their rights of due process, equal protection of the laws, and fair trial.

124. Permanently enjoin defendants, their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction or control, from further and future enforcement, operation, or execution of the policy of the use of charges which do not result in

a finding of guilt against the respondent attorney as a basis of other violations or as a "pattern of practice" violation, and from threatening, harassing, deterring, discouraging, or otherwise interfering with LEAF's and all other attorneys' rights to due process under the Constitution of the United States.

125. Allow LEAF her costs herein, including reasonable attorney's fees, and other such relief the Court may find appropriate.

Count V
Constitutional Violations

126. Following trial, to issue a permanent injunction preventing the Wisconsin Supreme Court, the State Public Defender's Office, and any other Wisconsin state agency from taking any action against plaintiffs based upon the defendants' unconstitutional acts.

127. Declare that the actions of the State Public Defender's Office of suspension without prior hearing, is unconstitutional and to permanently enjoin such practice and to award LEAF compensatory damages caused by the improper suspension.

Plaintiffs further demand judgment against the individual defendants as follows:

128. Awarding each plaintiff against STERNBERG, STIERMAN, CHIARKAS, KORTE, and DALLAS five million dollars ($5,000,000.00) compensatory and ten million dollars ($10,000,000.00) punitive damages from each defendant.

129. Awarding each plaintiff against REGREZ, ROETHE, MILLER, HENDERSON, LEVIHN, LUSTIG, and RUETTEN one million ($1,000,000.00) compensatory and five million dollars ($5,000,000.00) punitive

damages from each defendant.

130. Award each plaintiff against DANNER five hundred thousand dollars ($500,000.-00) compensatory and five hundred thousand dollars ($500,000.00) punitive damages.

131. Awarding each plaintiff their costs and attorney's fees.

132. For other such relief the Court may find appropriate.

Count VI
Conspiracy

Plaintiffs demand judgment against the individual defendants as follows:

133. Awarding each plaintiff against STERNBERG, STIERMAN, CHIARKAS, KORTE, and DALLAS five million dollars ($5,000,000.00) compensatory and fifteen million dollars ($15,000,000.00) punitive damages from each defendant.

134. Awarding each plaintiff against

REGEZ, ROETHE, MILLER, HENDERSON, LEVIHN, LUSTIG, and RUETTEN one million dollars ($1,000,000.00) compensatory and ten million dollars ($10,000,000.00) punitive damages from each defendant.

135. Awarding each plaintiff against DANNER five hundred thousand dollars ($500,000.00) compensatory damages and one million dollars ($1,000,000.00) punitive damages.

136. For other such relief the Court may find appropriate.

Count VII
Refusal to Prevent Conspiracy

Plaintiffs demand judgment against the individual defendants as follows:

137. Awarding each plaintiff against STERNBERG, STIERMAN, and CHIARKAS five million dollars ($5,000,000.00) compensatory damages and fifteen million dollars

($15,000,000.00) punitive damages from each defendant.

138. For other such relief the Court may find appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs demand trial by jury for all issues so triable.

November 14, 1991

Respectfully submitted,
LINDA A. LEAF and ANDREW B.HAYNES

By:_____
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atch A - SCR 21.14 & 22.24
B - SCR 22.07
C - SCR 20:1.6
D - ltr to Breese, pm'd 6/11/86

E - SCR 22.05(4)
F - 5/31/89 STIERMAN Invest. Rpt., pa. 1
G - 4/27/89 federal transcript, pa. 29

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LINDA A. LEAF and ANDREW B. HAYNES,

Plaintiffs-Appellants,

v.

91-3725

SUPREME COURT OF THE STATE OF WISCONSIN; BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY; GERALD STERNBERG; ROY KORTE; CHARLES STIERMAN; BRIAN HENDERSON; LYNNE LEVIHN; and UNKNOWN INSURANCE COMPANIES;
Defendants-Appellees.

MOTIONS FOR SANCTIONS

PLAINTIFFS-APPELLANTS LINDA A. LEAF and ANDREW B. HAYNES, by Charles L. Ollivier their attorney, move this Honorable Court, pursuant to its inherent disciplinary powers and FRAP 46, to impose sanctions against defendants in that statements contained in defendants' brief violate the standards of FRCP 11 (Mays v. Chicago Sun-Times, (CA 7, 1987) 865 F2d 134, 139, 140).

As grounds for said motion, state:

I. While FRCP 11 is not an appellate rule, it provides the Court with guidelines to mete out sanctions (Smith Lumber Co. v. Edidin, (CA 7, 1988) 845 F2d 750, 754). Actions inconsistent with the standards of Rule 11 are considered a violation of the rules of the appellate court (In Re Kelly, (CA 7, 1986) 808 F2d 549, 551; citing Thornton, infra, @ 1153).

II. Sanctions are warranted in that defendants make misrepresentations of fact and law, and make a specific attempt to take advantage of their misrepresentations of facts to create a false charge against LEAF.

III. The parties-defendant on appeal are stated in the case title. The other parties-defendant named in the Amended

Complaint have not been served in that the Amended Complaint was not allowed by the district court.

Misrepresentations

1. Misrepresentation of Law; HAYNES' rights.

A. Defendants, Wisconsin Supreme Court, its Board, Stierman, Korte, and Sternberg assert that the disciplinary proceedings against LEAF litigated the rights and claims of HAYNES (Def's Brief pa 22, 24); defendants Henderson and Levihn join in this assertion by their adoption of the Brief. This is contrary to BAPR's assertions during the disciplinary proceedings (atch A).

B. Not only was HAYNES a nonparty,. he was repeatedly denied the opportunity to be heard:

(1). At BAPR's insistence, he was barred from all depositions

without cause; without testimony, written statement or affidavit by any deponent, without any showing of cause to exclude, and without any hearing on the merits.

(2). He was not allowed to advise LEAF and her counsel during the disciplinary proceeding "trial" testimony of witnesses complaining about alleged acts of HAYNES done outside the presence of LEAF.

(3). His Motion For Leave To File an Amicus Curiae Brief was denied in spite of the fact that his brief was submitted with the motion.

How can an attorney disciplinary proceeding assert jurisdiction over a nonparty, nonattorney? Defendants never

explain. This is not a good faith argument for the change of existing legal precedent. A precondition for such good faith argument is for the party to accurately describe the law and then call for a change (Thornton v. Wahl), (CA 7, 78 F2d 1151, 1154).

2. A. Misstatement of Fact; Case Underlying Court I.

Defendants assert as fact that Count I of the Amended Complaint concerns the disciplinary proceedings (Def's Brief pa 13). It does not. Such false assertion is a violation (Kelly, supra, @ 552). The Board of Attorneys Professional Responsibility (hereafter: BAPR) action underlying Count I is a complaint by an opposing attorney in an estate case (atch B) which was opened and closed in 1988 without the filing of charges. It did not involve complaints by former clients and

there were no disciplinary proceedings. The disciplinary proceedings which are the subject of the federal suit opened in 1986, sat dormant until 1989, then ended last year.

B. Misstatement of Fact; Moot Issue. Defendants state that because of a formal complaint was filed in the disciplinary proceedings, the Count I gag rules arising from the (estate) case is rendered moot (Def's Brief pa 14). No formal complaint was filed in the estate case.

C. Misstatement of Fact; False Charge of Misconduct. Defendants seek to take advantage of their misrepresentations to falsely accuse LEAF and state "Leaf's first cause of action is a thinly veiled attempt to have the district court enjoin and frustrate the committee investigation of her..." (Def's Brief pa 14).

The defendants fail to explain how LEAF attempted this in the estate case that ended the year prior to the filing of the federal action. A statement of positive fact is a representation not only that the fact is true as represented, but also that the PARTY making the statement has a valid basis for making it (Kelly, supra @ 551).

D. False Statement of Fact; False Charge of Obstruction. Defendants then enhance the false charge by creation of a fictional fact situation: that this attempt (filing the federal complaint, Count I) to "frustrate came"...at a time when the Board was interviewing LEAF's former clients concerning their business relationship with her" (Def's Brief pa 14).

The witness interviewed by BAPR were in 1986; the federal complaint was filed

in 1989.

Parenthetically, the questions of how many of LEAF'S and HAYNES' "former clients" were interviewed was never allowed to be answered in the disciplinary proceedings, nor how the defendants came into possession of plaintiffs' various client and business associates lists (please see Amended Complaint para. 67-69).

E. False Statement of Fact and Law. Defendants then compound this misrepresentation of cases to claim that because Count I (estate case) relief is "specific" to LEAF, Count I should be dismissed because the specific relief requested "intertwines" it with the (unidentified) issues decided in the (unrelated) disciplinary proceedings. Defendants do not explain how the Wisconsin Supreme Court decision in the disciplinary proceedings

litigated issued arising from the unrelated and terminated estate case inquiry. Contrary to defendants' statement that the matter is no longer confidential because of the filing of the charges, BAPR sent a warning to LEAF to keep it confidential (atch B-3), 4); the affected citizens, clients of LEAF, still do not know of this state intrusion. When a party engages in this kind of deliberate mischaracterization, sanctions against the party are warranted (Teamsters Local #579 v. B&M Transit, Inc., (CA 7, 1989) 882 F2d 274, 280).

3. Misstatement of Issues; Nonparty Defendants. LEAF's federal civil rights and constitutional claims are against nonparties to the disciplinary proceedings. "The Wisconsin Supreme Court specifically addressed the issues raised by her proposed Amended Complaint" (Def's

Brief pa 16). By the Amended Complaint LEAF asserts federal civil rights and constitutional claims occurring outside the disciplinary proceedings against nonparties to the disciplinary proceedings, such as:

(A). Defendants State Public Defender, Chiarkas, and Miller (Am Cpl par. 5, 17, 18, 86) as alleged in Counts V, VI, VII, including for removal of LEAF from the attorneys' assignment list without hearing and prior to the disciplinary proceedings "trial". No State Public Defender client or case was involved in the subject disciplinary proceedings.

(B). Defendants Wisconsin Job Service and Lustig (Am Cpl par. 6, 19, 75) for violations claimed in Counts V and VI.

(C). Defendants Sternberg, Korte, Stierman, Regez, Roethe, Danner, Dallas,

Henderson, Levihn, and Ruetten (Am Cpl par. 7-16) for violations alleged in Counts II, III, V, VI, and VII.

(D). Defendants Supreme Court of Wisconsin and BAPR for violations alleged in Counts I, II, III, IV, V, and VI.

How are LEAF's rights litigated regarding these nonparties for issues not part of the disciplinary proceedings? Again there is no good faith call for change by the defendants.

4. Misstatement of Fact; Issues. How can the disciplinary proceedings have resolved the Count IV civil rights claim regarding "pattern of practice"? Indeed, in their Brief the defendants fail to even mention Count IV (pattern of practice), or how Wisconsin Supreme Court ruled on Count VI (conspiracy) and Count VII (refusal to prevent), or any other federal Count. The subject disciplinary proceed-

ing, by its very nature, can not be part of the pattern of practice complaint with complains of disciplinary cases which are opened, closed without hearing or finding or filing of charges then late used as a smorgasbord of nonspecific complaints to charge attorneys with a professional violation called a "pattern of practice" violation.

5. False Statement of Law; 11th Amendment. Defendants make a scattergun assertion of state immunity to all defendants, without distinguishing among the defendants, the issues, or the relief involved. This does not meet the standards of argument for good faith extension of law.

Argument

Underlying all law is a code, a moral code. It is a code by which one knows right from wrong.

Certain things are easy to define as

right or wrong. Other things sometimes become more complex; in which case we turn to the more complex code, called the law.

Included among the parties-defendant is the highest court of Wisconsin and its Board. That high court is charged with the sacred trust and duty to nurture and protect the more complex code, the legal code, the law.

In fulfillment of that sacred trust and duty it utilizes its Board, which also shares the duty to protect that code.

That high court and its Board establish standards which are to guide the conduct of all parties and all attorneys under their jurisdictions.

The Wisconsin Supreme Court, its Board and agents having violated their sacred duty to protect the code; this

Court must assume that duty. Protection of the truth arises from the duty of this Court to the law and to do substantial justice between the parties. The sanctions decision of this Court will guide all who come before it; it will set the standard for all governmental acts against citizens in future federal cases.

As is evident by defendants' conduct herein, all that stands between the Wisconsin Supreme Court, its Board, its co-conspirators and the destruction of truth are two citizens, armed only with the rule of law, and this Court, armed with its inherent powers and its duty to the truth.

Defendant do not offer any explanation for putting these untruths in their Brief. Either the parties-defendant did no investigate before alleging or they decided to misstate facts readily know-

able. This is not permissible. (Skycom Corp. v. Telstar Corp., (CA 7, 1987) 813 F2d 810, 819).

Because it is a monolith with near absolute powers, the Wisconsin Supreme Court (and its co-conspirators) must be kept closely in check to prevent harm to the plaintiffs, and to prevent harm to the public good by the setting of improper example for the attorneys and citizens of Wisconsin.

If this blatant misconduct is taken under the eyes of this Court, what tyranny to citizens and the truth lurk under those concealed and secret state acts. Those actions must be held up to the light for scrutiny against the federal constitutional standards; such is the duty of the district court, and the need for district court jurisdiction and protections here.

The bad faith acts of defendants spotlight the actual need for the district court to determine the facts, the issues, and the law involved in LEAF's and HAYNES' federal complaints against all the defendants.

Creating false facts and false charges claiming misconduct is the modus operandi of the defendants in their effort to railroad plaintiffs who attempt to expose this well-hidden and well-protected state corruption.

What is more dismaying: an intentional, premeditated, official state plan to falsely convict two innocent citizens; or, an intentional, premeditated, official policy to mislead this Court into misusing its powers to accomplish the same end? The Wisconsin Supreme Court and its Board have performed a greater disservice to this Court and the People

of the State of Wisconsin than to the plaintiffs (see: Beam v. IPCO, (CA 7, 1988) 838 F2d 242, 249).

Summary

Perhaps the best summary is a quote: "A lawyer shall not knowingly: (1) make a false state of fact or law to a tribunal..." (WSCR 20:3.3; Candor Toward The Tribunal).

Prayer

Plaintiffs pray this Court to formally admonish defendants and require individual explanations of their conduct, to require the Wisconsin Supreme Court and BAPR to public such admonishment in their regular professional publications in order to serve as a warning that this Court will not tolerate the making of false allegations by ANY party, no matter how powerful, in papers filed with this Court, and for other such relief the

Court may find appropriate.

April 9, 1992

Respectfully submitted,
LINDA A. LEAF and ANDREW B. HAYNES

By:

_____
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STATE OF WISCONSIN
IN THE SUPREME COURT

In the Matter of Disciplinary
Proceedings Against:
LINDA A. LEAF
Attorney at Law

RESPONDENT'S MOTION
FOR RECONSIDERATION

Case No. 89-2062-D

Linda A. Leaf, by Charles L. Ollivier her attorney, moves the Court to reconsider its findings in this action and its decision to suspend Respondent's license to practice law.

As ordered by the Referee, many of the exhibits are Respondent's originals. These documents are critical elements of proof of Respondent's innocence, vital to her continued pursuit of justice, and may be irreplaceable if damaged or lost. Therefore, Respondent prays that the Court protect the exhibits and record of

this case from harm's way.

Based on the record produced in this case, the following is a brief statement of the distortions, half-truths, and falsehoods contained in the Court's decision of October 16, 1991, and are given as reasons in support of Respondent's motion for reconsideration.

For brevity, only a few of the numerous discretionary abuses, blatant errors of law, and falsehoods will be discussed herein. However, omission here should not be interpreted as Respondent's waiving or withdrawing her objections to the abusive and unconstitutional actions taken against her by individuals, state agencies, BAPR, and the Wisconsin Supreme Court.

Cover-up through conviction. The Court's conviction of Leaf may serve to protect the image of the institution, but

it will not erase the illegal and abusive acts of BAPR.

SWITCHING OF CHARGES

Examples. Leaf was found guilty of at least two violations for which she was neither charged nor tried. First, the Court states that Leaf's misconduct consisted of: "...making misrepresentations to a circuit court and to the Board of Attorneys Professional Responsibility concerning the business relationship between her and the nonlawyer,..." (SCt decision, p 1). However, Claim Three of BAPR's Amended Complaint (see Attachment A) charges Leaf with misrepresentation to BAPR when she stated that Haynes was not her employee. No charges of misrepresentation to a court relative to Haynes' status with her office were made. The Referee ruled that Haynes was, indeed, not Leaf's employee. But the Referee and

the Court instead found that Leaf did not make full disclosure to BAPR about her association with Haynes (SCt decision, p 8,9).

Even if there exists such a violation as failure to make, what is later determined to be, a full enough disclosure in a particular case, Leaf was never charged nor tried for such a violation. Furthermore, the Referee and the Court ignored the uncontroverted evidence that Leaf did make full disclosure relative to all BAPR and trial court interrogations.

In response to BAPR inquiries, on June 5, 1986, Leaf submitted a seven page letter to BAPR explaining in detail her association with Haynes and his connections with BAPR's four witnesses.

BAPR asked the question: "...explain the capacity in which Mr. Haynes is employed by your firm." In her letter

(exhibit 1 to BAPR trial exhibit 11) Leaf informed BAPR that: "Andrew Haynes is not an employee of my law practice..... Depending upon the type of need, I utilize Andrew Haynes' services in several areas. These include technical expertise, real estate, social sciences, simulation (court and depositions), deposition interrogatories. Andy's qualifications include interdisciplinary experience and training in the technical, financial, social science and law enforcement areas".

Based on BAPR's lack of follow-up on this question at the time, Respondent assumed that BAPR had no further questions on this issue.

The second switch of charges, i.e., finding Leaf guilty of violations for which she was not charged or tried, occurred with the misrepresentations to a

court concerning communications with a former client.

BAPR's Amended Complaint charged that Leaf filed a false affidavit with a circuit court because she made contrary statements in a letter to BAPR (See: Claim Four, Attachment B). At trial it was proved that Leaf never made any statements to BAPR which constituted a basis for BAPR's claim that she filed a false affidavit with a court. Nonetheless, the Referee and the Court changed the basis for the charge, and then found that the affidavit was false. Furthermore, this change occurred after the trial. In other words, Leaf was falsely accused, charged and tried for stealing a horse. The evidence failed to support that charge. So, she was then found guilty of and punished for arson. Message: due process notwithstanding, just

find Leaf guilty of something, **ANYTHING**, in spite of the proof of her innocence.

The Referee and the Court also found Leaf guilty of misrepresentation to a court regarding her prior representation of the plaintiff in a civil action for sexual misconduct in 1985 (SCt decision, p 7). Leaf was never charged with misrepresentation to a court for that particular incident. Even though selectively directed at Leaf, at best, this is sloppy law. This conduct does not meet the minimal levels of expectations for honesty and fairness.

THE DECISION IS NOT SUPPORTED BY THE EVIDENCE

The Court states that the Referee's findings are supported by the evidence in the record and adopts them. Even a casual perusal of the record clearly shows that the Referee's findings are based

upon: direct, documented falsehoods from BAPR, its witnesses and coconspirators; irrefutable errors of law by the Referee; and, unacceptably proactive illegal conduct by BAPR.

The Court follows the same tactic used by BAPR and the Referee by making broad, vague, general statements which do not relate to the charges, the evidence, or in most cases the testimony of the four complaining witnesses; three of which were either coerced or manipulated by BAPR into participating in this conspiracy.

Of the four complaining witnesses, one met with Leaf before being told of, being referred to, or meeting with Haynes. Only two did business with PASS, Inc. PASS is the business in which Leaf and Haynes are associated and is the subject of the conflict of interest

charge.

The Court consistently and pejoratively refers to PASS as a counseling business when testimony and exhibits (including business stationary) indicate that it is a consulting business providing services to individuals and organizations.

The Court states that Leaf "permitted a nonlawyer business associate, Dr. Haynes, to have unsupervised and unrestricted access to her clients and the confidential legal matters she was handling for them, allowed him to act as their principal counselor and advisor, encouraged them to enter into business relationships with him and referred them to him for counseling through a business she, Dr. Haynes and his wife owned." (SCt decision, p 2). The bombastic leap in legal logic here is amazing. Leaf neither

has, nor should have, control over who her clients may talk to or consult with, or what they talk about. "Principal counselor and advisor" - what does this mean? This is a ploy phrase created and, through repetition, legitimized by BAPR in these proceedings. It is a fiction, as are the charges. Through action and policy, Leaf was not a patronizing controller of clients.

"Principal counselor and advisor" about what? In what areas? How frequent makes principal? What is acceptable for the profession? For Leaf? Is the Court saying that Leaf is to control whom her clients talk to, what they talk about, and how often they talk to someone? Does that rationale apply only to Leaf and Haynes? What SCR violation did Leaf make?

Based on statewide advertising since

the beginning of her practice, the fact is that clients came to Leaf for innovative legal and law-related services. Leaf extensively and frequently advertised her association with other businesses by using ads such as those identified in trial exhibits (Exhibits 21, 43, 140, and attachment to Ex. 35).

Also, Leaf's Yellow Pages ads for years have advertised her legal reform programs such as Client Assisted Services, Congenial Divorce, and Law Related Services. When potential clients, responding to these ads, called her office, they were often seeking the combination of legal and nonlegal services at a collectively lower rate than straight legal fees. There was no hidden agenda, no bait-and-switch tactics. Just comprehensive services at lower costs. Under the mission statement "Legal Reform is

Absolutely Necessary" Leaf's efforts at innovative services were well known, sought after and commented on, both pro and con.

Clients had an opportunity to become fully informed of the type and style of practice before they even called, indeed, it was what many sought out. Written disclosure preceded any potential working relationship. Finally, a written contract was mandatory.

When Leaf attempted to provide evidence on this, she was prevented from doing so by BAPR and the Referee (Trial transcript, vol 6, p 160-163). Example: The one noncoerced complaining witness, Ruetten, testified that she submitted six different coupons for law related or nonlegal services (Trial exhibit 140).

The Court states that "...the business operated from Attorney Leaf's law

office or from the suite adjacent to it and at times Dr. Haynes' bills for services were sent out through Attorney Leaf's office." (SCt decision, p 3). At no time did PASS, the business referred to, operate from Leaf's law office. It operated from a facility several miles away on North 35th Street, or occasionally from a suite adjacent to Leaf's law office. There was no evidence presented at trial that PASS operated from Leaf's law office. Indeed, the BAPR witness, DeMerchant, testified that PASS was operated from the 35th Street location (8/18/90 trial transcript, Vol. 4, p. 758, 759). The Court's finding is directly contrary to the testimony of BAPR's own witness; this can only be construed as an intentional false finding.

The claim that bills for Haynes' services were sent out through Leaf's

office is misleading and a continuation of the conspiracy to cultivate charges. Why is the Court condoning this conspiracy? The situation occurred with only one client, Linda Ruetten. At Ruetten's **DIRECT REQUEST** bills were sent to Ruetten from Haynes for Haynes' services by inclusion in the same envelope as Leaf's communications.

At the time that Ruetten made the request it was accepted and complied with in good faith; a mere case of rendering a client convenience which in and of itself did not constitute a SCR violation. However, the record shows Ruetten was acting under BAPR's guidance. It was only later that Leaf realized Ruetten's request was a setup subterfuge for which there is little or no defense. That is why entrapment is frowned upon.

The Court found "In her professional

relationship with four women clients, Attorney Leaf represented to them that Dr. Haynes was her legal assistant, her assistant or her legal associate, although there was no employer-employee relationship between the two." (SCt decision, p 3). This is a distortion designed to deceive. Even if this claim were true, since there was no requirement that a legal assistant be an employee, Leaf did not com-mit a violation. When Haynes did act in the capacity as Leaf's "legal assistant" that capacity was so identified and was in compliance with the code of professional conduct.

The Court complains that Haynes answered Leaf's law office telephone (Sct decision, p 3). At no point was Leaf aware of a Supreme Court Rule prohibiting the use of electronic answering devices, live answering services or a nonlawyer

nonemployee answering a lawyer's telephone.

Referring to Leaf's representation of a client in a paternity action and Haynes' contact with the alleged father, the Court states: "He also represented to the father and his attorney that he was a qualified mediator and, without having been asked to do so, attempted to mediate the matter." (SCt decision, p 3). This statement is false, defies common sense, and stretches legal logic. However, if it had occurred, the attorney-father and his attorney violated several Supreme Court Rules. This is what happened. Stanley H. Michelstetter II, the father and an experienced attorney and arbitrator himself, and Michael Winter, his attorney, requested that Haynes mediate a social/sexual issue; not a legal issue. Haynes, a qualified and experienced mediator,

agreed to do so. Michelstetter, the attorney-father, participated and paid for the session. But both Michelstetter and Winter were displeased with Haynes' refusal to help force their point of view on Gretchen Resech (Leaf's client). Resech was never a client of Haynes or PASS.

Granted! The attorney-father and his attorney were unhappy with Haynes' proper ethical conduct as a mediator. But that was not a situation of Leaf violating a SCR. Incidently, neither the Michelstetter nor Winter testified at the disciplinary trial.

An example of the Court's bizarre rationale used to promote Leaf's conviction is the "throw the baby in the snow" incident. The Court distorted what happened by describing: "when the client was confronted by social service authorities

and asked to turn her child over to them, she telephoned Attorney Leaf's office for advice. Dr. Haynes answered the telephone and, without consulting Attorney Leaf, told the woman to surrender the child." (SCt decision, p 3,4).

The facts, as supported by the record, are: In subzero weather, Gretchen Resech threatened hospital personnel that she was going to throw and leave her baby in the snow. Understandably, the hospital officials called the police and Child Protective Services. Both the police and the social worker told Haynes that they were going to take the baby from Resech, by force if necessary (Trial transcript, vol 1, p 216; vol 6, p 147). Haynes then spoke with Resech and advised her not to physically resist and to comply with police orders (Trial transcript, vol 5, p 74, 77; vol 6, p 146). The CHIPS petition

reports that the woman threatened to throw the baby in the snow (Exhibit 75). This was not a legal issue. It was a public safety issue. What violation did Leaf commit? How could this possibly constitute the unauthorized practice of law? Haynes saved the infant from possible harm, Resech from possible arrest, and the hospital from continued disruption. The Court condemns this act. The only alternative would have been for Haynes to hang-up; imagine the consequences of such an act! The frenzy to condemn Leaf and Haynes is no better demonstrated than by this finding which places the public welfare at risk.

Referring to Haynes, the Court states "He also prepared and obtained from her an unlimited power of attorney and entered into a life style management contract under which he collected a fee

of 30 percent of all income she received by virtue of that contract." (SCt decision, p 4). The power of attorney was not unlimited. It specified the areas of services that Cathy Marefke wanted. The client could and did terminate the contract at will and without penalty. The fee was 30 percent of the profit from Haynes' efforts; no profit, no money.

The Court finds that Haynes gave legal advice to a client concerning "setting up residence in Milwaukee county to establish venue." (SCt decision, p 4). This statement is false and even the client, Diane DeMerchant, testified to its falsity. Why is the Court making a finding which contradicts the testimony of its own witness?

DeMerchant called after office hours and Haynes answered the telephone. As instructed by Leaf, he gave "boilerplate"

information (Trial transcript, vol 5, p 5-7, 16; vol 6, p 5, 6). Haynes related the information and questions he had obtained from DeMerchant to Leaf. Because DeMerchant could only call after office hours, Leaf gave Haynes information to relay to DeMerchant (Trial transcript, vol 4, p 811; vol 5, p 16). How does DeMerchant describe this initial conversation with Haynes? "Well, I told him why I wanted a divorce, and he said that he'd call me back after discussing it with Ms. Leaf and he'd let me know." (Trial transcript, vol 1, p 104). What legal advice did Haynes, a messenger, give?

The Court states: "The Referee found that Attorney Leaf received a direct financial benefit from all of this client's dealings with the counseling business and Dr. Haynes." (SCt decision,

p 4). Leaf only received a small and indirect benefit from Marefke's transactions with PASS and lost money on DeMerchant. Resech and Ruetten were not involved with PASS.

The Court found that relative to one client Haynes "spoke directly to the attorney for the client's husband concerning a proposed property settlement ..." (SCt decision, p 5). The testimony at trial by Haynes was that he did not have conversations with Mr. Ruetten's attorney (Trial transcript, vol 6, p 34-35). The only evidence of such an occurrence was the **speculation** of Linda Ruetten. A reading of Linda Ruetten's trial transcript demonstrates that she perjured herself many times. Neither Mr. Ruetten nor his attorney testified at the trial. The Court finds Leaf guilty of a transgression based upon the speculation

of a documented perjurer and proactive coconspirator.

As Ruetten's consultant, Haynes answered questions about mediation, taxes, home sale, dating, sexual conduct, finding a roommate, office in the home, etc. As a mediator, real estate broker, NASD licensee and tax preparer all communication to Ruetten were within the scope of Haynes' state or federal licenses, and did not constitute a violation by Leaf.

The Court states: "The Referee then concluded that Attorney Leaf entered into business relationships with clients where her professional judgment was affected by her financial and business interests, promoted her own self interest and compromised her professional judgment..." (SCt decision, p 6). There was never any evidence, or even a claim, by any of the witnesses, that Leaf's professional judg-

ment was in any way affected. BAPR, the Referee, and now the Court have never explained how Leaf's professional judgment was affected. Furthermore, according to SCR 20.24 Leaf had a duty to avoid even the appearance of a conflict of interest. How-ever, the SCR does not specify a particular method for doing that. Leaf elected to use the method of full disclosure, written contract, and a performance requirement of no gain to client - no money to PASS. This was designed to accommodate competing concerns of the legal profession such as infringement by nonlawyers and Leaf's commitment to legal reform.

The Court adopts the Referee's finding that: "...Attorney Leaf failed to answer written interrogatories and a demand for production of documents, failed to produce documents the Referee

ordered her to produce, including tax records of the counseling business..." (SCt decision, p 9). This is yet another outright falsehood. Leaf initially objected to the unconstitutionally broad interrogatories and document demand made by BAPR. She had a legal right to do so. After a hearing on the issue, the Referee limited BAPR's discovery demand as requested by Leaf. Leaf answered all interrogatories and provided all the documents requested, except PASS tax records which Leaf did not have in her possession and control.

There is no legal requirement to provide records that are not in one's possession or control. Leaf did provide BAPR with the information on who was in possession of the tax records. The Referee then advised counsel for BAPR to subpoena the tax records from the state.

Those records were later altered by BAPR.

BAPR MALFEASANCE

The Court states that the way Leaf conducted her defense is an affront to the Court, its disciplinary board and the people who carry out the enforcement of its rules. Unless defense against fraud, defamation, and violations of her and other citizens' constitutional rights is now an affront to the Court, the Court fails to give even one example of disrespectful conduct. Judicial fiat in lieu of evidence.

Contrary to the Court's selfserving statement that none of Leaf's charges have been substantiated or has the least merit, Leaf has referenced each act to the record, e.g., Attorney Stierman's falsification of his Investigative History as to the reason for the 1986-1989 delay (Leaf's fault) stands directly

contrary to the explanation for the 1986-1989 delay (BAPR "did nothing") given by Wisconsin Department of Justice attorney Weinstein to federal Judge Curran on April 27, 1989 (federal transcript, pa. 29).

Only by studiously ignoring the record can the Court reach its conclusion. Further the Referee refused to allow Leaf to conduct any discovery into the misconduct of BAPR and its coconspirators. The Referee's legal logic? He continuously ruled that BAPR and its coconspirators were not "on trial".

How can this Court insist that Leaf prove malfeasance while preventing her the from doing so?

Because the Court is the only sanctuary of the citizen against governmental abuse, should not prosecutorial misconduct always be before the Court? Because

of the improper ruling -executed solely to protect the insti-tution's image - the full extent of the malice, prejudice, racism, and personal bias against Leaf and Haynes could not be shown.

However, even with this artificial and improper limitation preventing discovery of evidence of the illegal and improper acts of BAPR, Leaf's Motion For Supervisory Writ details - with specific reference to the record - the malfeasance of BAPR and the Referee. The Court, without explanation, has not answered those documented charges; it refuses to even acknowledge them.

The Court also fails to address any of the constitutional issues raised by Leaf, echoing the Referee. Denial, without explanation or reasoned opinion, does disservice to the public welfare. Why doesn't the Court address the basic con-

stitutional issue which triggered this action: the Stierman demand.

After his violation of SCR 22.05 (4), self-appointed investigator Stierman issued his unconstitutional demand of January 26, 1989. This demand was not designed to obtain relevant information; it was specifically designed to require Leaf to refuse to comply (by exceptional burden and unconstitutionality) in order to manufacture a false claim of failure to cooperate.

Prior to the intervention of self-appointed investigator Stierman, Leaf fully cooperated with BAPR's investigation as the correspondence in 1986 fully attests. This even included obtaining input from Dr. Haynes to answer the many questions of BAPR's May 19, 1986, inquiry. Indeed, Leaf fully cooperated with all investigations concerning specific

allegations regarding the four complaining witnesses; the Referee stated that Leaf "would produce all records in connection with the clients named in the complaint" (3/31/90 hrg, pa. 25, ln. 12).

Leaf refused, and continues to refuse, to produce the other documents demanded in the unconstitutional demand of January 26, 1989. That demand is overly broad, invasive of the constitutional rights of Leaf's clients, their business associates, and herself, and is irrelevant. That punitive demand was made without a prior finding of impropriety against Leaf which might justify its reach. It demands nine years of client records; nine years of business records; nine years of personal tax returns; nine years of business tax returns (the IRS only requires tax records to be kept for a maximum of four years [IRS regulation

36.6001-1(e)(2)] - the same requirement as the State of Wisconsin [Wis. Stat. 71.77(2)]); nine years of Dr. Haynes' business records (to be produced by Leaf). Stierman's January 26, 1989, demand was:

1. unreasonable and oppressive;
2. not made in good faith;
3. intended as a general "fishing expedition";
4. lacked specificity;
5. and, was arbitrary.

Stierman neither requested nor conducted a prior examination of Leaf's records regarding the four complaining witnesses.

The demand violates the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including the rights of: Privacy; Free Association; Due Process; Equal Protection; Unreasonable

Search and Seizure; and, Fifth Amendment. (Leaf asserted the Fifth Amendment only on behalf of her clients and business associates, not for herself). The State can not go into the office of any business or individual and demand records be turned over without a search warrant.

There must be a showing of reasonable cause for the State intrusion. This protection is even more important in the case of an attorney's records. Each client has the right to expect that the confidentiality of the matters discussed with their attorney will not be subject to scrutiny by the State. While BAPR had the right to demand information and records regarding the four complaining witnesses, it had no right to demand information and records regarding Attorney Leaf's other clients or business associates without the specific consent

of each individual or a search warrant in which BAPR would have had to articulate to a judge the reasons for the fishing expedition through the client files.

"...governmental purpose to control or prevent activities constitutionally subject to state control may not be achieved by means which sweep unnecessarily broadly and thereby invade the areas of protected freedom." NAACP v. Alabama, 377 US 288, 307 (1964).

Far more insidious and crudely vicious than the violations of Leaf's rights is the assault upon the constitutional rights of other citizens - of an attorney's clients and those of the clients' associates. The **VERY** person the law charges with the ultimate duty to protect those clients' rights is to be muzzled. Muzzled by whom? The perpetrators of these constitutional violations,

who have cloaked themselves in the mantle of justice.

BAPR, on a wholesale basis, attempted to violate those citizens' constitutional rights, and not only can't their attorney warn them - she can't even tell them once this violation is over.

This negates the Constitution of the United States. This denies those citizens those rights and their rights under 42 USC 1983. Despite the Referee's finding that there was no merit to Leaf's constitutional claims, the Referee himself recognized this constitutional issue and questioned Attorney Roethe, the BAPR prosecutor, about it (3/31/90 hrg., pa. 24, ln. 17).

To BAPR these citizens MUST remain ignorant less they seek redress (to enjoin or punish) with the federal Court - BAPR attempts to deny those citizens of

their constitutional rights, including those under the First Amendment. Yet, "...the right to protect one's constitutional rights, as one sees them, in a federal court is as fundamental as any expressed in the Bill of Rights, and the lawyers who attempt to assert these rights should not be forced to do so at their peril." Sutton v. County Court of Racine County, Wisconsin, et al., 353 FS 716, 718 (ED Wis, 1973).

"Each constitutional guarantee embodies the right to seek redress for a violation of that guarantee. Any attempt by the state to restrict that right is subject to challenge under the due process clause of the Fourteenth Amendment." Sutton, supra at 718.

"And whatever may be or may have been true of suits against the government in other countries, the exercise in our

own...of First Amendment rights to enforce constitutional rights through litigation, as a matter of law, can not be deemed malicious." NAACP v. Button, 371 US 415, 439-440 (1963).

As recognized by the Referee (3/31/90 hrg, pa. 24, ln. 17), the procedure of BAPR commanding Leaf to secrecy prevents the very person those citizens look to for protection of their rights from advising them of the violation of their rights. This procedure is clearly unconstitutional; no government should be able to immunize itself from the ability of citizens to assert and protect their constitutional rights.

Further, Stierman's demand also violates the limitations of SCR 22.07 (3) to compel production of "pertinent" documents. Leaf has always been ready, willing, and able to produce all records of

the four complaining witnesses (see: Referee statement, 3/31/90 hrg., pa. 25). There can be no violation without BAPR's PROVING the relevancy of the documents demanded. It has not, and can not, for there is no legal justification for Stierman's demand.

Stierman set-up a circumstance wherein Attorney Leaf had not only a legal right, but also a legal duty to refuse. The violation was manufactured. It was a response his demand was calculated to elicit.

The taint of personal animus, bias, and conflict of interest followed self-appointed investigator Stierman to the committee he appointed himself to chair: the District 2 Investigative Committee. Which, under Chairman Stierman, made the identical unconstitutional demand.

Leaf had no duty to submit herself

and her clients' rights to that body. Because of the acts of Attorney Stierman, the investigative committee was not a lawful body, nor was it a neutral one. It was a perversion of justice created to carry out the personal and malicious agenda of Attorney Stierman and BAPR.

Where are the checks and balances for governmental actions here? By its refusal to address the constitutional issues, the Court condemns any and all of the citizens of Wisconsin to unrestrained secret state scrutiny by BAPR under the guise of attorney discipline. And there is no way for them to know when or if.

Laches. The Court, and the Referee, fail to give even one example of Leaf causing delay; therefore how can it say the delay "was in large part due to" Leaf? What did Leaf do to cause any part

of the 1986 - 1989 delay? Leaf repeatedly asked the Referee for additional time for discovery - BAPR having delayed its discovery answers for six weeks of the four months the Referee allowed Leaf for discovery (BAPR had four years), and the Referee delayed ruling on BAPR's objections until July 18th, for a total delay of almost three of the four months allowed for discovery - the Referee denied her requests. Justice demands that the Court identify - from 1986 to 1991 - the delay caused by Leaf.

CONCLUSION

The Referee had to ignore the documented perjury of BAPR's witnesses to preserve the case for BAPR and to protect the image of the institution. The changes in testimony by DeMerchant and Ruetten were too numerous and substantial to be accidental; they were intentional and vicious

yet they had to be ignored by the Referee to preserve BAPR's case. Attorney Stierman was the instigator who acted on a personal agenda of revenge in violation of Supreme Court Rules which the Referee ignored to preserve the case. Paul Dallas, the driving force behind DeMerchant, was one of the field workers for BAPR who by action, reputation, and public record is an avowed white supremacist and neo-Nazi. The Referee had to supress any evidence of BAPR's involvement with Dallas to protect the image of the institution from being degraded by revelation of its active involvement with such a person.

The true tenor of this entire proceeding is shown by the Court's refusal to acknowledge the improper acts of its agents.

It approves the attempted unre-

strained intrusion into the privacy of citizens not involved in the controversy.

It accepts the documented perjury of all BAPR's witnesses. It accepts and aids BAPR's complicity with DeMerchant to obstruct justice and to avoid the legal consequences of her acts.

It accepts the Referee's refusal to act on constitutional issues, in spite of the Referee's March 31, 1990, identification of one of those constitutional issues.

It accepts Attorney Roethe's misrepresentations to the Referee as to the Fifth Amendment and the March 31, 1990, order, and his falsification of the March 31, 1990, order. It transmutes Roethe's running out of each records examination/deposition noticed by Leaf, taking the witnesses and their records with him, into Leaf's walking out.

It accepts the "neutral" Referee providing advice, on the record, to BAPR's prosecutor on how to avoid the impact of the Referee's rulings favorable to Leaf (what does this portend as to what occurred outside the record?).

It willingly condemns Dr. Haynes and Leaf for the Resech incident in which Haynes acted to save the infant from serious potential physical harm and avoid the arrest of the client.

By its malfeasance, BAPR violated its basic duty to the Court, Leaf, and the public. By its unquestioning acceptance of the acts of its agents, the Court violates its basic duty to two citizens of the State of Wisconsin. In this case the Court has chosen to protect the guilty and punish the innocent; the truth must now emerge.

October 23, 1991 LINDA A. LEAF

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Charles L. Ollivier hereby certifies that on October 23, 1991, he served the within papers on Attorney John W. Roethe and Referee Rudolph P. Regez, by mail, pursuant to Wis. Stat. 801.14 (2).